



**CITY OF MEMPHIS**

**REQUEST FOR PROPOSAL**

**#52515**

**Solid Waste Collection Services**

**Date Issued: December 14, 2021**

**Proposal Submission Deadline: January 19, 2022**

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## 1. OVERVIEW

The purpose of this Request for Proposals (“RFP”) is to define the City's minimum requirements, solicit Proposals, and gain adequate information by which the City may evaluate the services offered by Proposers. The City of Memphis, Tennessee hereinafter referred to as the City, intends to secure a contract for Solid Waste Collection Services.

### 1.1 GENERAL CONDITIONS

The following data is intended to form the basis for submission of proposals to provide Solid Waste Collection Services. This material contains general conditions for the procurement process, the scope of service requested, contract requirements, instructions for submissions of proposals, and submission forms that must be included in the proposal. The RFP should be read in its entirety before preparing the proposal. All materials submitted pursuant to this RFP shall become the property of the City of Memphis.

To the extent permitted by law, all documents pertaining to this Request for Proposals shall be kept confidential, to the extent necessary for review, until the proposal evaluation is complete. No information about any submission of proposals shall be released until the process is complete, except to the members of the Evaluation Committee established by the City and other appropriate designated City staff. All information provided shall be considered by the Evaluation Committee in making a recommendation to enter into an agreement with the selected consultant.

Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the RFP shall be made in accordance with the requirements listed in Section 4.5 Initial Questions Submission, Final Questions Submission. The City of Memphis is not responsible for oral interpretations given by any City employee, representative, or others. The issuance of written addenda is the only official method whereby interpretation, clarification, or additional information can be given. Any questions or concerns not submitted by the stated time and date will be deemed waived.

If any addenda are issued to this Request for Proposals, the Purchasing Division will post them to the City's website at <https://www.memphistn.gov/business/rfps-rfqs/>. Submitting organizations are strongly encouraged to view this website often to see if addenda are posted. Failure of any proposer to receive such addendum or interpretation shall not relieve such Proposer from any obligation under his proposal as submitted. All addenda so issued shall become part of the Contract Documents.

The City of Memphis reserves the right to (a) accept or reject any and/or all submissions of proposals; (b) to waive irregularities, informalities, and technicalities; and (c) to accept any alternative submission of proposals presented which, in its opinion, would best serve the interests of the City. The City shall be the sole judge of the proposals, and the resulting negotiated agreement that is in its best interest, and its decision shall be final. The City also reserves the right to make such an investigation as it deems necessary to determine the ability of any submitting entity to perform the work or service requested. Information the City deems necessary to make this determination shall be provided by the submitting

entity. Such information may include, but is not limited to, current financial statements by an independent CPA, verification of availability of equipment and personnel, and past performance records.

## 2. SCOPE OF SERVICES

### 2.1 SCOPE OF CONTRACT

2.1.1. The Scope of Work performed under this Contract shall include furnishing all supervision, materials, equipment, and labor necessary to satisfactorily perform services within Service Area E, as required and specified in these procurement documents. Services specified herein include municipal solid waste, recyclables, and curbside trash collection services currently provided by the City of Memphis Solid Waste Management in other service locations throughout the city. In addition to collection services, the provision and maintenance of collection containers are also requested herein. More specifically, the successful Contractor(s) will provide and maintain collection containers, and collect solid waste, recyclables, yard debris, tires, and bulk waste from residential and small commercial customers at the curb of public streets or location designated by the City in the specified Service Area, as required by the Contract.

2.1.2. Service Area E is located along the eastern most boundary of Memphis. A link to the general map of the Service Area is included in these procurement documents. For information on how to access a detailed map online, please call 901-636-6865.

2.1.3. There are an estimated 35,579 active residential and 306 small commercial locations in this Service Area. The number of units will vary throughout the term of the contract as occupants move in and out of homes and businesses. In addition, during the term of this agreement the City reserves the right to add additional stops resulting from the annexation of area(s) contiguous to the current limits of Service Area E. Likewise, the City also reserves the right to reduce the number of stops resulting from the secession of area(s) currently included within the limits of the Service Area.

2.1.4. The Contractor shall be required to collect all city acceptable waste and recyclables from the Service Area on the same day. The Contractor shall deliver all waste and recycling material to disposal and processing facilities specified herein (see Section 2.5.4). Disposal and tipping fees at designated facilities will be paid by the City, except as provided by Section 2.5.4.

2.1.5. The handling, collection, and disposal of all refuse within the City of Memphis are governed by the City of Memphis Code of Ordinances, Title 9, Chapter 9-56.

### 2.2 CONTRACT AWARD

2.2.1. Proposals will be evaluated based on the proposer's qualifications, service delivery proposal, unit pricing, and proposals most beneficial to the City. When preparing proposals, proposers are instructed to use the number of units listed on the PRICE FORM. (Also see TERMS AND CONDITIONS section).

Proposers must enter unit pricing for all entries, including the 12-month total. Should there be a miscalculation, the unit price will prevail.

2.2.2. The base contract term is five (5) years, to end June 30, 2027. The City intends to execute this contract as soon as possible after award, and possibly before collection services commencing July 1, 2022. In the event the contract is executed prior to July 1, 2022, the contractor will not be compensated at the monthly bid rate provided in Exhibit 2 (Price Form), unless the City and Contractor mutually agree to earlier commencement of collection services. After the base term, the City will have the option to renew for an additional five (5) year period, for a total of ten (10) years if all options are exercised. Each year of the contract will be subject to appropriation of funds by the Memphis City Council. Failure to appropriate funds for a fiscal term of the contract shall not entitle the Contractor to any sum of money not already stipulated within the proposal as cost of cancellation, nor for any amounts for subsequent terms in the contract. The City will notify the Contractor in writing of its intent to exercise the option period.

2.2.3. The Contractor(s) will not implement services until a Notice to Proceed is issued in writing from the City. However, one or more meetings between the Contractor and the City may be scheduled in advance of the Notice to Proceed, and at the discretion of the City.

## 2.3 DEFINITIONS

The following terms, as used in these documents, shall have the following meaning:

**Advertising** – Shall mean any written communication for promoting a product or service. The Contractor’s name and telephone number, and other information provided in the manner specified in this Agreement, is not Advertising.

**Agreement** – Shall mean the Contract between the City and the Contractor for the purposes of this RFP, the term “Agreement” and “Contract” are interchangeable.

**Applicable Law** – Shall mean any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, permit, rule, regulation, directive, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which are in effect or are enacted, adopted, promulgated, issued or enforced by a governmental body during the term of this Agreement, and relate in any manner to the performance of the City or Contractor under this Agreement.

**Automated Collection** – Shall mean the collection of solid waste in a collection container by mechanical means, usually with a single-driver vehicle equipped with a side-loading arm.

**Bulk Waste** – Shall mean a large item that is discarded by a Customer which cannot be placed in a collection container because of its size, shape, or weight. Bulk Waste includes, but is not limited to, white goods, furniture, household goods, electronic equipment, and up to four (4) de-rimmed passenger tires. Bulk Waste does not include construction and demolition debris and yard trash.

**City** – City of Memphis, or any department, administrator, City, or employee thereof.

**City Acceptable Waste** – All contained or uncontained residential and commercial solid waste. City "Unacceptable" Waste shall be oversized tree debris, dirt, rock, construction/demolition debris,

hazardous waste, liquid waste and/or any other items not in compliance with City of Memphis ordinance(s) and any future items banned by local, State and Federal law.

City Recycling Facility - refers to the facility designated to receive recyclables. This is currently the Republic Services facility located at 3197 Farrisview Blvd in Memphis. This designated facility may change during the term of the contract.

Collection – Shall mean (a) the process of picking up solid waste and recyclable materials from a customer that generates such waste and materials and (b) the process of transporting and delivering the solid waste and recyclable materials to a solid waste management facility.

Collection Plan – Shall mean the Contractor's written plan for providing collection service in compliance with the requirements in this Agreement.

Collection Service – Shall mean one or more of the services provided by the Contractor for the collection of solid waste and recyclable materials pursuant to this Agreement.

Commencement Date – Shall mean July 1, 2022, which is the date when the Contractor shall begin providing Collection Services to the Customer pursuant to the requirements of this Agreement. By mutual agreement between the City and contractor, this commencement date of the contract may be earlier.

Complaint – Shall mean any notification by a customer including the “City” to the City or the Contractor that the applicable requirements of this Agreement were not satisfied by the Contractor.

Construction and Demolition Debris - means wastes, other than special wastes, resulting from construction, remodeling, repair, and demolition of structures and from road building. Such wastes include but are not limited to bricks, concrete and other masonry materials, soil, rock and lumber, road spoils, rebar, paving material.

Contractor – refers specifically to the successful proposer selected under the terms of this proposal and resulting contract to perform services in accordance with the specifications.

Curbside – Shall mean that portion of the right-of-way adjacent to the curb, alley, paved street, or traveled City roadway. Curbside also refers to the borders or edges of service alleys and parking areas that adjoin residences.

Customer - Shall mean all persons, including residents and/or commercial entities, receiving Collection Services under the terms of this Agreement.

Garbage – Refers to household or commercial solid waste in collection containers.

Holidays – Any day(s) during a week (Monday through Friday), when normal City of Memphis Solid Waste Management services are not provided. There are currently 13 holidays observed by the City (see Section 2.6.2).

Recycling Bin or Container – Any container used as a collection depository for recyclable material, distributed or designated by the City or the Contractor.

Recyclable Items – Refers to those items designated as acceptable for recyclable in Section 2.7.3. The City reserves the right to revise, add, delete, or otherwise, modify this list at its discretion.



Roll Container (Collection Container) – A 96 gallon (approx.) wheeled refuse container, to be provided by the Contractor, which can be emptied mechanically.

Service Area – Area(s) within the incorporated boundaries of Memphis, which have been designated by the City to be serviced by the Contractor.

Single Stream Recycling – A form of recycling whereby all materials are mixed in one collection container, thus requiring no sorting of recyclables by the Contractor at the curb. All acceptable recyclables identified in this proposal will be collected by the successful contractor in all Containers on a weekly or biweekly schedule to be determined by the City and then delivered to the City's designated recycling facility.

Solid waste - means garbage, trash, refuse, abandoned material, spent material, byproducts, scrap, ash, sludge, and all discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities. Solid waste includes, without limitation, recyclable material when it is discarded or when it is used in a manner constituting disposal. Solid waste does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act (compiled at 33 USC Section 1342).

Stops (Units) – Individual service locations, as it relates to collection or when the Contractor "stops" to collect.

Tagging – Placement of large yellow tags, or other City-approved notice, on refuse/debris at the curb in violation of City Ordinance (see Section 2.5.3).

Trash – Means non-vegetative solid waste collected from residential curbside that is not contained in garbage carts or recycling carts/bins. Typically, trash is household debris and personal items.

Yard Waste – Shall include uncontained or loose organic/plant matter, grass clippings, shrubbery, tree trimmings, limbs, bagged leaves, and other similar organic landscaping material.

## 2.4 PROPOSER/CONTRACTOR QUALIFICATIONS REQUIREMENTS

Contractor shall submit the following **underlined items** with their bid/proposal:

2.4.1. **Bid Bond** – An amount of five percent (5%) based on the first-year total of the base bid is required with the proposal.

2.4.2. **Performance Bond** – The successful proposer must provide a signed statement. Bond shall be issued in an amount equal to fifty percent (50%) of the estimated payments for the first term (year) of the Contract. The bond amount shall be adjusted annually throughout the life of the Contract to an amount equal to fifty percent (50%) of the actual payments for the preceding 12-month period

2.4.3. **Financial Statement** – Shall provide a copy of the latest certified financial statement of the proposer (or parent company if the individual subsidiary or division financial statements are not prepared and available) by a firm of independent certified public accountants.

2.4.4. Organization Chart and Resumes – Shall provide an organization chart and resumes of the proposing company's local, regional, and corporate management, as well as local supervisory personnel. Documentation shall include proof of management personnel having a minimum of four (4) years of municipal solid waste collection experience.

2.4.5. Experience & Reference(s) – Shall provide a detailed list of all municipal garbage collection projects performed over the last five (5) years. Included in this information should be three (3) references (names and phone numbers) from municipalities (city or county) where the proposer has provided solid waste collection services, including a description of the services provided, number of residences serviced, monetary value of contract, term of contract & whether your company is a prime or a subcontractor.

2.4.6. List of Collection Vehicles - Shall be used for the execution of services in the intended service areas. List shall include what vehicles are on hand or will be able to acquire in time for City inspection thirty (30) days before commencement of services. Vehicles should be listed by the number, type (automated, semi-automated packers and recyclers etc.) year/make/model/size (see Section 2.9).

2.4.7. List of Safety Violations in the last 5 Years – List of recordable safety violations and/or accidents in the last 5 years.

2.4.8. Transition Plan – A comprehensive document describing in detail the activities that will be undertaken, and the schedule that will be followed, by the Contractor to ensure that the Contractor provides Collection Service in compliance with the Agreement beginning on the Commencement Date.

- a) Contractor shall ensure that there is no disruption experienced by Customers when the Contractor begins to provide services under the Agreement on the Commencement Date. Accordingly, Contractor shall prepare and provide the City with a Transition Plan promptly, no later than thirty (30) calendar days after the notice to proceed. At a minimum, the Transition Plan shall demonstrate that the Contractor will hire and train the necessary personnel, and procure and prepare the necessary vehicles and equipment, prior to the Commencement Date. The Transition Plan shall explain how and when the Contractor will provide collection containers (garbage, recycling, and bulk collection) to Customers by the Commencement Date. The Transition Plan is subject to the approval of the City. If requested by the City, the Contractor shall provide additional information concerning the Transition Plan, revise the plan within fifteen (15) calendar days of its request, and resubmit the plan for approval.
- b) Interim Milestone Deadlines for Contractor's Transition Planning:
  - i) Within two weeks after the notice to proceed the Contractor and City shall meet and discuss the Contractor's Transition Plan and any other matters that will help ensure successful implementation of the Contractor's Transition Plan.
  - ii) By March 9, 2022, the Contractor shall provide the City with a Collection Plan, pursuant to Section 2.4.9, below.

- iii) By March 9, 2022, the Contractor shall provide the City with a plan outlining the notification requirements pursuant to Section 2.11 below which shall be subject to the approval of the City.
- iv) By April 13, 2022, the Contractor shall provide documentation demonstrating that all necessary vehicles and equipment for Collection Services have been ordered and will be delivered prior to June 1, 2022.
- v) By May 11, 2022, the Contractor shall provide a plan for the assembly and distribution of all Collection Containers (garbage and recycle) that will be supplied to Residential Customers. The plan shall include timing, staffing and distribution methods and schedule for the Containers.
- vi) By May 25, 2022, the Contractor shall provide the City with an electronic (digital) copy of the notice the Contractor intends to publish in the local newspapers concerning commencement of Contractor's services. The Contractor shall also supply the electronic (digital) copy of the brochure that the Contractor intends to provide to Residents concerning Collection Services it will provide under this Agreement. The notice and brochure and other material shall contain the information outlined in Section 2.11.
- vii) By March 9, 2022, meetings shall be held at least every two weeks after the notice to proceed between the Contractor's District Manager and the City to discuss the status of implementation of the Transition Plan.
- viii) By June 1, 2022, the Contractor shall confirm in writing to the City that all collection and equipment necessary to provide Collection Service have been delivered to the Contractor's local facility. In addition, the Contractor shall confirm in writing that all the Collection Containers for all services have been delivered to the Contractor's local facility or that they will be delivered according to the approved schedule for assembly and distribution of the Collection Containers.
- ix) By June 15, 2022, the Contractor shall confirm in writing that all vehicles necessary to provide the Collection Service have been properly licensed and registered. The Contractor shall supply a list that identifies the make, model, year, VIN, tare weight, license tag number and Contractor's vehicle number for each Collection vehicle. Equipment should be available for inspection by the City.
- x) By June 15, 2022, the Contractor shall deliver or mail all notices/brochures and information to all Residential Customers concerning Contractor's Collection Service. Notices and brochures shall be subject to approval by the City.
- xi) By June 17, 2022, the Contractor shall confirm in writing to the City that: (1) all informational material has been delivered; (2) Contractor has hired and trained all the employees needed to provide Collection Service in compliance with the requirements in this Agreement and (3) all the Contractor's drivers have inspected their collection routes and confirmed their ability to complete the routes on the scheduled collection days.
- xii) By June 30, 2022, the Contractor shall confirm in writing to the City that it has delivered all the Collection Containers (garbage and recycle) and Mechanical Containers needed to provide Collection Service in compliance with this Agreement.

2.4.9. Collection Plan– The Contractor shall prepare a written plan for providing Collection Service in compliance with the requirements in this Agreement. The collection plan shall be submitted as part of the proposal documents. The plan shall adhere to the following guidelines:

- a) At a minimum, the Collection Plan shall identify and describe the vehicles, equipment, personnel, routes, and schedules the Contractor will use for each type of Collection Service. The Collection Plan shall include a legible map for each Collection route, identifying the Operating Days when Collection Service will be provided, the starting and ending points for the route, and the type of Collection Service that will be provided on the route on each Scheduled Collection Day.
- b) The Collection Plan shall adhere to and identify each of the City approved disposal and handling facilities (see Section 2.5.4) that will receive the materials collected by the Contractor pursuant to this Agreement.
- c) The Collection Plan shall identify the procedures that will be used by the Contractor to ensure that the City is not billed inappropriately for the collection, disposal, or recycling of Solid Waste or other materials. Among other things, the Collection Plan shall identify the procedures that will be used by the Contractor to ensure that each City-approved disposal and handling facility is fully informed whenever the Contractor delivers Solid Waste or other material (e.g., material collected under the Supplemental Collection Service) for which the Contractor, rather than the City, must pay the applicable Tipping Fee.
- d) The Collection Plan shall include the manufacturer's specification sheets for the Collection Containers provided by the Contractor under this Agreement.
- e) An updated Collection Plan shall be submitted to the City whenever the Contractor changes the plan.
- f) The Collection Plan and all revisions to the plan are subject to the City's prior written approval.

## 2.5 GENERAL PROVISIONS

### 2.5.1. General Scope of Contractor's Duties

Collection Service Levels – Residential and Commercial solid waste (garbage carts), residential recyclables (recycle carts), residential bulk waste (uncarted/loose debris), residential yard debris (bagged and/or bundled), and up to four (4) de-rimmed passenger tires will be collected at curbside on the same day within the allowed times presented in Section 2.6. Residential and Commercial service levels are presented for proposers to submit unit pricing.

- a) Area E Residential Service: Garbage, Recycle, Bulk Waste, collection; and Cart Maintenance for approximately 36,000 locations:
  - i) Weekly collection of 96-gallon garbage carts + reasonable overflow [typically two (2) bags or ½ yd<sup>3</sup> of yard waste];
  - ii) Weekly collection of 96-gallon recycle carts;
  - iii) Bi-weekly (two (2) times per month) collection of bulk waste (up to 10 yd<sup>3</sup>), to include no more than four (4) de-rimmed passenger tires; and
  - iv) Maintenance/replacement of garbage and recycle carts.

2.5.2. Collection of "Waiver" Customers - The Contractor shall provide "waiver" collection of household garbage and recyclables in roll Containers "at the house" for residents identified by the City as being physically unable to place their roll Containers at the curb. There are currently 128 waivers in the

contract area; however, that figure will vary. The Contractor will receive a list of active waivers, by address, (30) days prior to service start.

### 2.5.3. Code Violations and Non-Collection Procedures

- a) Exempt Wastes - The following types of Exempt Waste are not subject to the Contractor's collection under this Agreement and shall be subject to Code Violations as defined herein.
- i) Construction and demolition debris (including concrete).
  - ii) Excavated fill and earthen material (including root balls with soil attached).
  - iii) Solid Waste and by-products from an industrial process.
  - iv) Uncontained commercial waste placed outside of roll Containers.
  - v) Recyclable Materials which are clearly contaminated.
  - vi) Liquid, semisolid, or contained gaseous material.
  - vii) Wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts, including used oil and lead- acid batteries (excludes de-rimmed passenger tires).
  - viii) Boats, boat motors, and boat trailers.
  - ix) Hazardous, Biomedical, and Radioactive Waste.
  - x) Sludge.
  - xi) Materials and wastes like those listed above, when designated by the City.
- b) Code Violations - The Contractor is responsible for identifying and reporting code violations involving waste placed at the curb in the contract area. The most common violations are contractor generated debris (tree, construction, etc.), oversized tree debris, remodeling/construction and demolition debris, and homes with no utilities whereby no monthly solid waste fee is being paid. The City will fully inform the successful contractor prior to service implementation about applicable codes.
- c) Tagging Procedures for Code Violations - Debris placed at the curb in violation of the City Code of Ordinances will be reported by the Contractor's Supervisor or designated person by phone and email to the City Service Fee Manager or designee as soon as the violation is identified. The contractor representative will provide the address and alleged violation. A City representative will inspect the address for verification within twenty-four (24) hours and will tag the debris for the violation, photograph the tagged debris, and communicate by phone and email to the Contractor's Supervisor or designated person. If the City determines the material is not in violation the Contractor Supervisor will be instructed to remove the material. Once the material has been verified as a violation and the Contractor has been notified a tag has been placed on the material, the property owner will have five (5) days to remove the debris. If the debris/material is not removed by the property owner in the specified five (5) days, the Contractor will proceed on the service location's next scheduled bulk collection. The Contractor shall photograph the debris as it is being loaded and after completion, haul away the debris, and forward the photos and documentation forms provided by the City. The per person-hour rate (as established by the City, currently \$100/hour) and truck load amount (in cubic yard increments) will be submitted as part of the documentation and will be used by the City to invoice the property owner and reimburse the contractor. The property owner will be invoiced the labor cost and disposal charges as determined

by the City. Only the hourly labor rate will be reimbursed to the Contractor by the City. Deviations of the tagging procedure by the Contractor must be authorized by the City. The procedure for tagging and billing may be adjusted by the City during the contract.

- d) Non-Collection Procedures - The Contractor shall place a Non-Collection Notice on a Customer's Collection Container if the Contractor decides that the Contractor will not collect the Customer's waste because the waste was not presented in compliance with the applicable requirements. If the Contractor does not place a Non-Collection Notice on the Customer's Collection Container, the City in its sole direction may require the Contractor to return to the Customer's Premises as set forth hereinafter and collect the waste. If the City notifies the Contractor before 12 P.M. (noon), the Collection shall be completed before the end of the day. If the City notifies the Contractor after noon, the Collection shall be completed before noon on the next Operating Day.

The Contractor is responsible for determining whether a Customer's Recycling Container contains Non-Conforming Material or excessively contaminated Recyclable Materials. The Contractor may leave Non-Conforming Material and excessively contaminated Recyclable Materials in the Recycling Container, but if the Contractor does, the Contractor shall immediately place a Non-Collection Notice on the container, explaining why the material was not collected.

The Contractor shall not collect Residential or Commercial Waste from a Customer if the Contractor believes the waste contains Hazardous, Radioactive, or Biomedical Waste. In such cases, the Contractor shall place a Non-Collection Notice on the Collection Container, take photographs of the improper waste (if possible), and immediately notify the Field Supervisor. If the generator of such waste is unknown, the Contractor shall work with the City to identify the generator and identify an appropriate method to remove and dispose of the waste in a lawful manner.

If a Collection Container is temporarily inaccessible, the Contractor shall provide Collection Service later the same day, whenever feasible. If it is not feasible, the Contractor shall leave a Non-Collection Notice and provide Collection Service on the next Operating Day.

If a Residential Customer routinely places Garbage outside of their Garbage Container or routinely places more waste at the curbside than is allowed under this Agreement, the Contractor shall provide the Customer with educational materials concerning Recycling. Further, the Contractor shall notify the City about the Customer's failure to comply with the requirements in this Agreement. The Customer may be required to obtain an additional Garbage Container.

The Contractor shall develop Non-Collection Notices subject to the approval of the City. At a minimum, the Non-Collection Notices shall contain the following information: the issuance date; the Contractor's reason for not providing Collection Service; information advising the Customer how to correct the problem; and the telephone number to call if the Customer has any questions for the Contractor. The Contractor shall notify the City immediately upon issuance of a non-collection notice.

#### 2.5.4 Disposal Requirements

a) Municipal Solid Waste

- i) Disposal- All waste collected in the Service Area must be disposed of in the proper City designated facilities where disposal fees, or tipping fees, will be paid by the City. The City, at its sole discretion, will identify the designated facility(ies) to be used. The designated facility will be located within ten (10) miles of Shelby County, Tennessee.
- ii) Disposal of Household and Commercial Waste- City Acceptable Waste collected in the contracted service area is required to be delivered to a facility classified by the State of Tennessee as a Class I landfill, or a facility similarly permitted pursuant to Subtitle D of the Resource Conservation and Recovery Act. The Contractor is required to meet with management of the designated facilities in advance of the Contract start date to become familiar with all landfill requirements.
- iii) Disposal of Yard Waste- Yard waste collected in the Service Area will be delivered to any of several disposal facilities designated by the City. These facilities include those classified by the State of Tennessee as Class III/IV landfills, or facilities similarly permitted pursuant to Subtitle D of the Resource Conservation and Recovery Act or applicable State regulations, and public and private yard waste recycling facilities. The contractor shall make every effort to divert yard waste to one of these facilities as it is considered waste diversion/recycling and will be documented for application toward the City's annual waste reduction goal established by the State of Tennessee.
- iv) Disposal of Trash, Bulky Items, and Tires - Trash, bulky items, and tires collected in the Service Area will be delivered to any of several disposal or transfer facilities designated by the City which are permitted to receive such waste.
- v) Collection Vehicle Disposal Site Registration- The successful Contractor must register all collection vehicles associated with this contract prior to initiation of services with the City, and all designated disposal facilities. Registration by truck number is needed at each designated facility to identify all vehicles delivering loads from the contract area and for verifying landfill billing accuracy. The City is not responsible for paying disposal for any loads delivered to any of the disposal facilities by unregistered vehicles or by registered vehicles containing waste generated outside the contract area, whether partial or whole loads. Should the Contractor intentionally or unintentionally deliver unauthorized waste (generated outside the contract area) to any of the disposal facilities whereby the City is billed for said loads, the Contractor will be assessed a penalty of \$2,500 for the first load (partial or whole) and \$5,000 for any subsequent loads (partial or whole).

- b) Recyclables - All recyclables collected by the Contractor in this contract are considered "City Recyclable Material" and shall be delivered to the City's recycling processor, currently ReCommunity, located at 3197 Farrisview Blvd, Memphis, TN 38118. The Contractor will not be charged a tipping fee and no revenue will be paid to the contractor for the City Recyclable Material. The City's recycling processor may reject any load considered contaminated under its agreement with the City. The Contractor will be required to remove rejected loads and transport for proper disposal. Prior to implementation of services, the Contractor must register all recycling vehicles that will be collecting in the Service Area with the City and the recycling processor. Numbers shall be posted on the vehicles for easy visibility on the side and rear of the recycling vehicle(s). Under no

circumstances will recycling vehicles, carrying City Recyclable Material, dispose material in a landfill or other undesignated facility without authorization from the City. Any documented occurrence of City Recyclable Material intentionally or unintentionally being disposed in a landfill or other unauthorized facility will be subject to a penalty of twenty-five hundred dollars (\$2,500) for the first occurrence, and five thousand dollars (\$5,000) for any subsequent occurrence and may be grounds for termination.

c) Spillage and Litter

- i) The Contractor shall not cause or allow any Solid Waste, liquid, or other material to be spilled, released, or otherwise dispersed in the City because of the Contractor's activities.
- ii) The Contractor shall immediately pick up any spillage or litter from Collection Containers that is caused by the Contractor during the Collection Service.
- iii) When hauling or transporting any material over public roads in the City, the Contractor shall use a covered or enclosed vehicle or other device to prevent the material from falling, blowing, or escaping from the vehicle. If Solid Waste or any other material escapes from or is scattered by Contractor's vehicle for any reason, Contractor shall immediately pick up such material.
- iv) Contractor's vehicles shall not release or cause litter in violation of the Tennessee Litter Law (Title 39, Chapter 14, Part 5) or the Ordinances. If litter is released or falls from Contractor's vehicle for any reason, the Contractor shall immediately stop the vehicle and retrieve the litter.
- v) The Contractor shall immediately report and clean up any oil, hydraulic fluid, or other liquid that leaks or spills from the Contractor's vehicles and the Contractor shall repair any associated damage. The Contractor shall provide an emergency clean-up plan approach and the contact information for their emergency clean-up provider. Spillage Report must include the following information: -Your name, location, organization, and telephone number -Name and address of the party responsible for the incident; or name of the carrier or vessel, the railcar/truck number, or other identifying information.
- vi) If the City or a Customer notifies the Contractor before 12 P.M. (noon) that the Contractor has caused litter, or caused a leak or spill of Solid Waste, oil, hydraulic fluid, or other liquids or materials, the Contractor shall clean up the liquids and materials before the end of the day. If the City or a Customer notifies the Contractor after noon, the Contractor shall clean up the liquid or material before noon on the next Operating Day.
- vii) Failure to comply with any provision of Section 2.5.4.c) will be subject to a penalty of five hundred dollars (\$500) for each reported incident.

## 2.6 SCHEDULES, ROUTES AND HOURS OF OPERATION

2.6.1. Hours and Days of Operation - The Contractor shall not begin collection(s) in the contracted Service Area before 7:00 a.m. nor continue after 7:30 p.m. without the approval of the City's Administrator of Solid Waste Operations. Exceptions to collection hours shall be effective only upon the approval of the City. If hours of operation must be extended due to inadequate resources or other contractor negligence, a penalty of \$2,500 per day will be levied.



2.6.2. Holidays - The following are holidays observed by the City. Holiday observances may vary from year to year. During holiday weeks, all residential and commercial units must receive collections as contracted. Typically, collections are delayed one day later during holiday weeks and Saturdays are utilized. Please note the City is contemplating adding Juneteenth (June 19<sup>th</sup>) as a local holiday. Should there be a change in City observed holidays, the Contractor will be notified accordingly.

<b>Holiday</b>	<b>Date</b>
New Year' Day	January 1 <sup>st</sup>
Martin Luther King Jr. Birthday	3 <sup>rd</sup> Monday in January
President's Day	3 <sup>rd</sup> Monday in February
Martin Luther King Jr. Memorial Day	April 4 <sup>th</sup>
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
Independence Day	July 4 <sup>th</sup>
Labor Day	1 <sup>st</sup> Monday in September
Veteran's Day	November 11 <sup>th</sup>
Thanksgiving Day	4 <sup>th</sup> Thursday in November
Friday after Thanksgiving	4 <sup>th</sup> Friday in November
Christmas Eve	December 24 <sup>th</sup>
Christmas Day	December 25 <sup>th</sup>

2.6.3. Schedules and Routes - A general map of the Service Area is included in Exhibit 9; however, for directions on how to access a detailed map online contact 901-636-6865.

- a) Currently, Service Area E is routed Monday through Friday, and the City wishes to avoid or minimize disruption of customers as much as possible with massive rerouting. Therefore, the successful Contractor will review the existing routes provided by the City to determine routing compatibility.
- b) Changes to Routes and Schedules - After the Commencement Date, the Contractor shall not change a Collection route, a Collection schedule, or the method of providing Collection Service unless the Contractor receives the City's written approval for the proposed change which may be granted at its sole discretion. The Contractor shall submit to the City a description of all proposed routes, schedules, and operational changes at least sixty (60) calendar days prior to the implementation of such changes.
- c) After the Commencement date and in the event the Contractor requests any temporary changes in Collection routes, Collection schedules or methods of providing Collection Service, the Contractor will submit to the City a description of such change. The City shall determine at its sole discretion if any such temporary changes are approved before Contractor may make any such changes.
- d) If the City in its sole discretion approves a change in the Contractor's schedules or routes as set forth herein, the Contractor shall provide all affected Customers with a written notice of the change and shall comply with the requirements in Section 11, below, unless a different notice is authorized by the City.

2.6.4. Service Following a Disaster - Should a storm or other event occur in the contract area which has been declared a disaster by local, state, or federal agencies, the Contractor shall continue to deliver

normal scheduled services as contracted. However, the City may request the Contractor to collect disaster debris at a service rate that is mutually agreed upon by the parties. Upon agreement by the Contractor and written authorization by the City, the Contractor shall collect disaster debris in an agreed upon area for a specified period and shall deliver such disaster debris to a location designated by the City. Debris from undeclared disaster is considered either acceptable or unacceptable solid waste and subject to the same collection requirements of the contract.

## 2.7 CONTRACTOR'S COLLECTION SERVICES

2.7.1. Proper Collection Procedures - Except as otherwise provided herein, the Contractor shall have the right to use all the public roadways in the City.

- a) The Contractor shall use suitable vehicles and equipment, as necessary, to provide Collection Services on narrow and dead-end streets, unpaved streets, private roads, and other areas where access is limited. This includes service alleys in zero-lot line developments, High Density locations and private drives to estate lots where Back Door service is provided.
- b) Except for Waiver Customers, the Contractor's vehicles shall not enter or drive upon any private driveway or Improved Property, to turn around or for any other purpose, unless the Contractor has received the owner's prior written permission to do so.
- c) The Contractor's vehicles shall not unreasonably interfere with vehicular or pedestrian traffic and shall maintain at least one open lane of traffic when operating in the City. Contractor's vehicles shall not be left unattended on streets or alleys.
- d) The City reserves the right to deny the Contractor's vehicles access to certain streets, alleys, bridges, and roadways when the City is repairing such areas, or the City otherwise determines it is in the public's best interest to restrict access. The City shall provide the Contractor with reasonable notice of such restrictions so that the City's action does not unduly interfere with the Contractor's normal operations.
- e) If the Contractor cannot provide Collection Service to a Customer because a street is temporarily closed to vehicular traffic, the Contractor shall return no later than the next Operating Day to provide service to the Customer. If the street is still closed at that time, Contractor may provide Collection Service to the Customer on the next Scheduled Collection Day.
- f) If access to a street, alley, bridge, or public or private roadway becomes impassable or if access is denied for any reason, the Contractor shall work with the Customer to determine a mutually acceptable location for the Collection of the Customer's waste. If a mutual Agreement cannot be reached, the Contractor shall provide Collection Service from the nearest public or private roadway that is accessible by the Contractor's Collection vehicle, or from a location specified by the City.
- g) In the event of ice, snow, inclement weather, or other conditions that may make collections unsafe for employees or the public, the Contractor will work with the City to determine a mutually agreeable collection schedule.
- h) If the Contractor encounters a Customer or situation (e.g., dogs; narrow streets; electrical wires) that prevents the Contractor from gaining the access needed to provide the Collection Service required in this Agreement, and the Contractor is unable to resolve the issue with the Customer, then the Contractor shall report the problem to the City and the City at its sole discretion shall resolve the problem. The City may require the Contractor or the Customer to take such action as the City deems necessary and appropriate.

2.7.2. Residential and Commercial Collection Service - The Contractor shall provide the following Residential and Commercial Collection Services to each Customer within the contracted Service Area.

- a) The Contractor shall collect each Residential and Commercial Customer's Garbage cart as described in Section 2.5.1. The Contractor shall not use fully automated collection vehicles for the collection of garbage carts.
- b) The Contractor shall collect each Residential Customer's Recycle cart as described in Section 2.5.1. The Contractor may use fully automated collection vehicles for the collection of recycle carts.
- c) The Contractor shall collect each Residential Customer's bulk waste, trash, and tires as described in Section 2.5.1. It is recommended that the contractor assign at least one piece of specialized equipment (grapple/loader) for every two (2) garbage routes. Tires shall be collected separate from other bulk waste and trash to avoid landfill disposal, which is prohibited in the State of Tennessee.

2.7.3. Acceptable Recyclable Material - The following items shall be considered acceptable for recyclable collection:

- a) Paper – flattened cardboard, paperboard, cartons, newspaper, magazines, office paper, mail;
- b) Plastic – bottles with lids, containers with caps, jars with lids, tubs, food produce containers, buckets;
- c) Metal – aluminum cans, steel containers, aluminum foil, tin pans and trays;
- d) Glass – jars, bottles, and containers; and
- e) Any additional items designated by the City during the Contract term.

2.7.4. Unacceptable Recyclable Material - The following items shall be considered unacceptable for recyclable collection:

- a) Bags, wrap, or film;
- b) Non-container plastic pouches;
- c) Hoses and tanglers;
- d) Aerosol cans;
- e) Food or liquids;
- f) Clothes or shoes;
- g) Batteries;
- h) Foam; and
- i) Any additional items designated by the City during the Contract term.

2.7.5. Residential Collection of Yard Debris and Bulk Waste - The Contractor shall collect each Residential Customer's Bulk Waste (up to ten (10) cubic yards) as described in Section 2.5.1. The Contractor shall have sufficient grapple loader or similar equipment for the collection of bulk waste. The Scheduled Collection Day for the Collection of a Residential Customer's Bulk Waste shall be the same Scheduled Collection Day bi-monthly as the Collection of that Customer's Garbage.

The Contractor is not required to collect more than ten (10) cubic yards of Bulk Waste or Yard Debris from any Residential Customer in one day. If a Residential Customer Sets Out more than ten (10) cubic yards of Bulk Waste for Collection, the Contractor shall collect at least ten (10) cubic yards of the Customer's Bulk Waste on the Scheduled Collection Day for Bulk Waste, but the Contractor may leave the remainder. The same holds true for Yard Debris Set Out in excess of ten (10) cubic yards.

If the Contractor elects to leave some of the Bulk Waste or Yard Debris, the Contractor shall place a Non-Collection Notice on the remaining materials or on the Customer's doorknob, in compliance with Section 2.5.3.

2.7.6. Procedures for Missed Collections - If the City or a Customer (residential or commercial) notifies the Contractor about a Missed Collection, the Contractor shall return to the Customer's Premises as set forth hereinafter and collect all Waste or Acceptable Recyclable Material (as the case may be) that has been Set Out for Collection. Once the Contractor is notified, the collection shall be completed within twenty-four (24) hours of the notification (including weekends).

2.7.7. Protection of Private and Public Property - The Contractor's employees shall not trespass on private property, except and only to the extent necessary to provide Collection Service in compliance with this Agreement. The Contractor's employees shall follow the sidewalk for pedestrians and shall not cross a Customer's property to an adjoining property, unless the occupants or owners of both properties have given permission. The Contractor's employees shall not loiter on or meddle with any property of any other Person.

- a) The Contractor's employees shall not damage any public or private property, including but not limited to roads, driveways, sidewalks, utilities, trees, flowers, shrubs, grass, and Collection Containers.
- b) The Contractor shall not damage trees in the City. Among other things, the Contractor shall not drive large vehicles on narrow streets, or drive tall vehicles under overhanging limbs, where the vehicles will break or damage the tree limbs. The Contractor also shall not damage tree trunks or roots when collecting Yard Trash or other materials (e.g., when Collecting Yard Trash with a "claw" truck or clamshell bucket).
- c) The Contractor shall promptly restore the soil and grade at any location where the Contractor's Collection of Yard Trash or other material creates a depression that is three (3) inches or more below the surrounding grade (e.g., when collecting Yard Trash with a "claw" truck or clamshell bucket). The Contractor shall fill such depressions and restore the grade to match the surrounding area.
- d) The Contractor shall instruct its employees concerning the proper procedures to be followed when there is an accident involving damages to public and private property. At a minimum, if the Contractor's employee causes such damage, the Contractor shall immediately notify the City and the property owner. If the property owner is not known or readily identifiable, the driver shall leave a notice that includes the Contractor's name and phone number.
- e) The Contractor shall be solely responsible for all damages, costs, and liabilities associated with the repair, restoration, or replacement of any property that has been damaged by the Contractor's equipment, employees, or agents. The Contractor shall promptly investigate and respond to any claim concerning property damage. If the City or a Customer notifies the Contractor before 12 P.M. (noon) concerning any such damage, the Contractor shall investigate and respond to the City and Customer before the end of that day. If the City or a Customer notifies the Contractor after noon, the Contractor shall investigate and respond to the City and Customer before noon on the next Operating Day. The Contractor shall promptly repair any damage within three (3) Operating Days, unless the Contractor requests and the City at its sole direction grant approval of an extension of time. Any disputes concerning the Contractor's obligations for the repair of property damages shall be resolved by the City in its sole discretion. In all cases, the Contractor shall be required to restore

the public or private property to a condition that is at least equal to the condition that existed before the damage occurred.

## 2.8 PROVISION AND MAINTENANCE OF COLLECTION CONTAINERS

2.8.1. Garbage Containers and Recycling Containers - The Contractor shall purchase and assemble all Garbage Containers and Recycling Containers that the Contractor provides under this Agreement.

- a) Each Garbage Container and each Recycling Container delivered to these Customers shall have a capacity of approximately ninety-six (96) gallons unless the City at its sole discretion authorizes the delivery of a different size.
- b) At the commencement of this agreement each residential and commercial customer will possess assigned carts. During the term of this Agreement, the Contractor shall purchase, assemble, and deliver at least one new Garbage Container and one new Recycle Container to New Residential Customers. The Containers shall be delivered within three (3) Operating Days after the City requests the Contractor to deliver the Containers. The City will supply the list of cart related service requests, including New Residential Customers daily. In instances of negligence, as determined by the City, the contractor may charge no more than \$75.00 for replacement of a garbage or recycle cart.
- c) Garbage Containers and Recycling Containers purchased by the Contractor shall become the property of the City when the Containers are delivered to a Customer or the City. Upon termination or expiration of this Agreement, the Garbage Containers and Recycling Containers held in the Contractor's inventory for the City (e.g., Containers that are hot-stamped or labeled with the City's name or logo) shall be delivered to a location designated by the City and shall become the property of the City. Additional Containers ordered by a Customer shall be hot stamped with the City logo, as specified and approved by the City, shall be the property of the City and remain at that Dwelling Unit. The contractor shall maintain an inventory of Containers purchased for this agreement and share this information with the City as requested.
- d) During the term of this Agreement the Contractor shall maintain an adequate inventory to meet the demand for the delivery of Garbage Containers and Recycling Containers for New Customers and the replacement or exchange of these Containers for Customers. At a minimum, the Contractor shall maintain at all times an inventory of no less than six hundred (600) Garbage Containers and six hundred (600) Recycling Containers.

2.8.2. Maintenance and Repair of Containers - The Contractor shall procure, and maintain at all times, an adequate supply of spare parts (e.g., wheels, lids) for the Garbage and Recycling Containers it provides for use in the Service Area. The Contractor shall be responsible for maintaining such Containers in good working condition. The Contractor shall repair or replace Containers promptly if the Contractor observes that the Container is defective or, within three (3) Operating Days after the Contractor is informed by the Customer or the City that the Container needs to be repaired. The Contractor shall clean and repair, as necessary, all Garbage and Recycling Containers that the Contractor receives as a result of exchanges.

2.8.3. Technical Specifications for Collection Containers

- a) Containers provided by the Contractor shall:

- i) have a nominal capacity of at least ninety-five (95) gallons;
  - ii) be hot-stamped or labeled in accordance with the specifications provided by the City; and
  - iii) be compatible with the hydraulic lifting and dumping mechanism mounted on the Contractor's Collection vehicles;
  - iv) have a flat area on the top (outside) of the lid suitable for the placement of informative stickers or decals;
  - v) be equipped with a Radio Frequency Identification ("RFID") tag;
  - vi) be uniform with regard to color (to be designated by the City), volumetric capacity, dimensions, finished surfaces, and hot stamping/labeling;
  - vii) be constructed to prevent the intrusion of water and animals, with covers that are free from sharp edges, and without any inside structures that prevent the discharge of its contents;
  - viii) be constructed so that water does not accumulate on the lid;
  - ix) be protected by a manufacturer's warranty for a minimum of ten (10) years.
- b) Contractor shall provide for approval the manufacturer's material and performance specifications and cut sheets for new Garbage and Recycling Containers before the Contractor orders the new Collection Containers from the manufacturer.

2.8.4. Disposal of Old Containers and Containers - The Contractor shall collect all Garbage Containers and Recycling Containers that are discarded by Residential and Commercial Customers. The Contractor shall deliver such containers to a Designated Facility for Recycling or disposal. The Contractor shall note the serial number of each Container removed from service and provide this information to the City as requested.

## 2.9 CONTRACTOR'S VEHICLES AND COLLECTION EQUIPMENT

### 2.9.1. General Requirements for Collection Vehicles and Equipment

- a) The Contractor shall purchase or lease, and maintain and repair, all of the vehicles and equipment necessary to provide Collection Service in compliance with the approved Collection schedules and otherwise promptly and efficiently comply with the requirements in this Agreement. The Contractor's vehicles and equipment shall be compatible (in size and weight) with, and appropriate for, the areas where such vehicles and equipment are utilized.
- b) Contractor's Collection vehicles and equipment shall be a standard product of a reputable manufacturer so that continuing service, and the supply and delivery of spare parts, may be ensured. Replacement parts do not need to be a product of the same manufacturer as the original parts.
- c) All of Contractor's Collection vehicles shall have waterproof seals and shall be watertight to a depth sufficient to prevent the discharge or leaking of liquids that have accumulated in the vehicle's cargo area during loading and transport operations.
- d) Each Collection vehicle shall fully enclose the Contractor's Load. A Collection vehicle shall have a fully enclosed metal top, a tarpaulin, or a net cover with mesh openings not greater than one and one-half (1½) inches in size. The top, tarpaulin, or cover shall be kept in good working condition and shall be free from tears and holes. The Contractor shall use the cover and shall fully enclose the Contractor's Load at all times when the vehicle's speed exceeds twenty (20) miles per hour and at other times when necessary to prevent the Contractor's Load from blowing out of the vehicle.

- e) Pickups in certain areas in the City may receive collection in alleys or narrow streets. These areas may not be able to accommodate standard size collection vehicles. Special provisions must be made to accommodate these conditions. Contractor shall verify the number of such alleys and narrow streets to be serviced and provide suitable equipment for collection in these areas. Proposed equipment for this service must be included in the listing of equipment submitted to the City.
- f) All Collection vehicles shall be painted a uniform color and bear the name of the company on each side of the vehicle, so it is clearly visible.
- g) Advertising shall not be allowed on the Contractor's vehicles, Collection Containers, or equipment used to provide Collection Service in the City. In the event that the City chooses to advertise the Recycling or other program, the City may negotiate with the Contractor for such Advertising.
- h) Vehicles used for the Collection of Recyclable Materials shall be designed to collect the Recyclable Materials in a "single stream" and deliver these materials in accordance with Section 2.5.4.
- i) Notwithstanding any other provisions in the Agreement, the Contractor shall furnish sufficient equipment, personnel, and plant to ensure the prosecution of the work in accordance with the approved Collection schedules.
- j) At all times, the Contractor and its employees shall operate and maintain all Collection vehicles and equipment in compliance with all Applicable Laws.
- k) At all times, the Contractor shall maintain all necessary licenses and registrations, and shall timely pay all fees and taxes, on all vehicles and equipment, as required under Applicable Laws.
- l) All equipment shall be operated in compliance with Tennessee state law and City of Memphis Code of Ordinances.
- m) The Contractor shall maintain a dedicated fleet of vehicles for the City's benefit. The front-line vehicles used to provide Collection Services under this Agreement shall not be used to collect Solid Waste or Recyclable Materials outside of the Service Area, unless the Contractor receives the City's prior written approval for such activity.
- n) Under the terms of this agreement and any renewal period of this agreement, none of the vehicles used shall be more than seven (7) years old.

#### 2.9.2. GPS, RFID, and Ancillary Equipment

- a) All vehicles used to provide Collection Services under this Agreement shall be equipped at all times with:
  - i) all safety equipment required by Applicable Laws;
  - ii) a fire extinguisher;
  - iii) a shovel;
  - iv) a broom;
  - v) a spill response kit adequate for cleaning up any leaks or spills of oil, hydraulic fluid, or other liquids from Contractor's Collection vehicles; and
  - vi) an audible back-up warning device.
- b) All vehicles used to provide Collection Services under this Agreement shall be equipped with a two-way radio, cellular telephone, or other equipment appropriate for communications between the vehicle operator, the Field Supervisor, and the District Manager. The proposed communications system is subject to approval by the City and should be included in the Collection Plan.
- c) The Contractor's trucks shall be equipped with a service verification system that incorporates GPS and RFID technologies to give operators, supervisors, managers, and customer service personnel, including the City, real-time access to information and work as the operators perform their jobs.

Operators should be able to immediately identify situations such as addresses where the carts are not out to be serviced, carts that are unserviceable, or other situations and immediately transmit that data back to operations personnel. The system should allow for work orders to be transmitted to the operator electronically. Integrated digital cameras that allow the operator to safely document conditions, proof of service, late setouts, etc. are required. Access to the Contractor's service verification system shall be made available to the City; this includes the ability for the City to monitor and confirm the delivery of collection services in real-time. The service verification system must be maintained throughout the term of the contract and the Contractor shall provide a list that incorporates all RFID tags and corresponding addresses of RFID-equipped City carts.

#### 2.9.3. Reserve Collection Vehicles and Equipment

- a) The Contractor shall have sufficient reserve vehicles and equipment available to complete daily Collection routes according to the schedules established pursuant to this Agreement. The use of reserve vehicles and equipment shall include, but not be limited to occasions when front-line vehicles and equipment are out of service, or when delays will prevent front-line vehicles and equipment from completing their Collection route(s) within the established hours of Collection.
- b) The reserve vehicles and equipment shall be ready to go into service within two (2) hours of any breakdown or delay experienced by a front-line vehicle. The reserve vehicles and equipment shall be similar in size and capacity to the vehicles and equipment being replaced.

#### 2.9.4. Local Storage, Maintenance and Cleaning

- a) The Contractor shall provide a storage yard, garage, and maintenance facility within ten (10) miles of Shelby County, Tennessee that enables all-weather, year-round maintenance operations for the vehicles and equipment used pursuant to this Agreement. The Contractor shall not use City property to store, wash, repair, or maintain any Collection Vehicles or Equipment, unless authorized by the City.
- b) The Contractor shall keep all Collection vehicles and equipment, to be used in the prosecution of Collection Services under this Contract, cleaned, and painted to present a pleasing appearance at all times. All Collection vehicles shall be washed thoroughly and sanitized with a suitable disinfectant and deodorant at least once each week unless the City approves an alternate cleaning schedule.
- c) The Contractor's Collection Plan shall include a schedule for cleaning, painting, and maintaining each Collection vehicle and Mechanical Container. At a minimum, the Contractor shall maintain each Collection vehicle and Mechanical Container in compliance with the manufacturer's recommendations.
- d) The Contractor shall monitor, maintain, and repair its Collection vehicles and equipment to prevent fuel, lubricants, and other liquids from leaking or spilling. Oil and hydraulic systems, and waterproof seals and enclosures, on the Contractor's vehicles and equipment shall be kept in good repair at all times to prevent leaks and spills.

#### 2.9.5. Identification of Collection Vehicles

- a) The Contractor's name and telephone number shall be displayed at all times, in letters at least four inches high, on the driver's side and the passenger's side of each one of the Contractor's Collection vehicles. Truck identification numbers shall be displayed at all times, in letters/numbers at least four (4) inches high, on all four (4) sides of all Collection vehicles.



- b) Vehicles used in recycling collection shall display information identifying them as recycling trucks. The information shall be displayed at all times, on the driver's side and the passenger's side of the vehicle body, in letters at least four (4) inches high. Upon the City's request and its sole discretion, the Contractor's vehicles also shall display information promoting the City's Solid Waste or Recycling programs. The information displayed on the Contractor's vehicles shall be subject to the approval of the City.
- c) The City will require a quarterly status report and at its sole discretion may inspect the Contractor's vehicles, equipment, licenses, and registrations at any reasonable time. The City reserves the right to inspect each Collection vehicle, each day, prior to its use in the City.
- d) The City shall at its sole discretion have the authority to require the Contractor to immediately remove from service any Collection vehicle or equipment that is leaking or spilling fluids, Solid Waste, or Recyclable Materials. The City also may require at its sole discretion any Collection vehicle, Collection Container, or other equipment to be cleaned, washed, painted, repaired, or maintained immediately. In such cases, the Contractor shall comply with the City's request within one (1) Operating Day, or the Contractor shall take the vehicle, container, or equipment out of service until the requested work can be completed.

## 2.10 CONTRACTOR'S LOCAL OFFICE, SUPERVISION, AND COMMUNICATIONS

### 2.10.1 Local Office

- a) The Contractor shall maintain an office within ten (10) miles of Shelby County, Tennessee which shall be equipped with a staff, online communications, and local telephone number, readily available to the City to receive and process complaints or inquiries at any times residential collections are being made (excluding holidays).
- b) The Contractor's office shall be equipped with sufficient personnel and equipment to document and timely respond to all inquiries, issues, and Complaints raised by the City or Customers. A responsible, experienced person shall be present and in charge of the office during all business hours. Contractor's office staff shall be familiar with the City and the Contractor's obligations under this Agreement.
- c) The Contractor's office shall have a toll-free telephone number for calls from Customers in the City. The Contractor's telephone system shall have the capacity to receive multiple telephone calls simultaneously. The Contractor shall have sufficient staff working in the Contractor's office each Operating Day beginning the Commencement Date, and as long thereafter as necessary to ensure Contractor's compliance with the requirements in Sections 2.10 and 2.11. The Contractor's telephone number shall be listed in the Contractor's webpage. Contractor shall use an answering machine or answering service to receive and record messages when the office is closed, or the Contractor is receiving more calls than its staff can answer. The answering machine or service shall give Customers the telephone number that the Customers may use to report an emergency.

2.10.2. Supervision - Competent field supervision is always required for all services provided in this contract. A clear level of management, with telecommunication with field personnel and the City Solid Waste Management Administrative office, shall be always maintained.

2.10.3 Communications - The Contractor shall provide the Administrator of Solid Waste Operations with a list of all names of company contacts pertinent to this contract by name, title, cell phone number, office number and email address. The Administrator of Solid Waste Operations must always have access to management and field supervisors during work hours, typically by cell phone, email and/or text. If contacted by the City the Contractor is expected to respond to confirm receipt of the email or call within one hour of the call, email or text from the City.

2.10.4 Progress Meetings - The Contractor (owner and/or manager of operations) will meet in person with the City Solid Waste Division on a scheduled basis throughout the term of the contract to discuss service status and execution. Meetings will be scheduled monthly during the first six (6) months and quarterly thereafter, unless otherwise instructed by the City.

## 2.11 PUBLIC NOTIFICATIONS

2.11.1. The Contractor shall provide the following notices and educational services to help inform the public about the City's Solid Waste management system. The Contractor shall work closely with the City when preparing the notices, educational materials, and promotional information required pursuant to this Section. The design and content of the notices, educational materials, and promotional information shall be subject to the City's prior approval. The Contractor shall be responsible for all expenses associated with the notices and educational services required herein.

- a) Notice for Commencement of Service - At least ten (10) calendar days before the Commencement Date, the Contractor shall design, print, and deliver a notice to each Customer concerning the Contractor's Collection Service and schedules. The notice shall be delivered by the U.S. Postal Service or hand delivered via door hangers. At a minimum, the notice shall:
  - i) identify the Scheduled Collection Days for the Customer receiving the notice;
  - ii) summarize the applicable Set Out requirements;
  - iii) include other educational and promotional information provided to the Contractor by the City; and
  - iv) provide other relevant information concerning the Contractor's services.
- b) Notices for New and Replacement Containers - Contractor shall prepare a Container hanger notice to be delivered with each Garbage and/or Recycling Container to all New Customers receiving new containers, and all Existing Customers receiving replacement containers. Notice shall include, at a minimum, information on proper Container placement and acceptable Container contents. This provision also applies to the initial delivery of all Garbage and Recycling Containers.
- c) Notices Concerning Changes in Collection Schedules - In the event of a scheduling change, the Contractor shall design, print, and deliver a notice to each Customer that will be affected by a change in the Scheduled Collection Days. The notice shall be delivered to the Customers at least ten (10) calendar days before the Contractor changes its Scheduled Collection Days. Notice also shall be published in the newspaper with the largest circulation in the City at least five (5) calendar days before the change occurs. If it is not practical to provide newspaper notice, the City may waive this requirement.

- d) Notice for Holidays - In the event that there is a change in designated Holidays, the Contractor shall provide notice to Customers that will be affected by a change in their Scheduled Collection Days in accordance with the procedure in Section 2.11.

## 2.12 COMPLAINT RESOLUTION

2.12.1. The Contractor shall take whatever steps are necessary to promptly remedy the cause of a Complaint. Notwithstanding any other provisions in the Contract, the Contractor shall furnish sufficient forces, plant, equipment and/or work the necessary additional hours of overtime, including Saturdays, Sundays and/or holidays, to ensure the successful prosecution of services in accordance with the approved schedule(s) and their completion. Should the Contractor refuse or fail to comply with said aforementioned obligations after receipt of a written or verbal directive by the City, the City may terminate the Contractor's right to proceed with work, in whole or part.

2.12.2. The Contractor will respond to all reported service complaints in a prompt and courteous manner. Notices received by the City from customers regarding non-collection or other service-related issues will be considered justified complaints until determined otherwise by the City or Contractor. Determining the justification of complaints shall lie solely with the City however, the Contractor may provide service verification documentation or other appropriate information to assist in determining validity. The Contractor will promptly investigate and resolve service complaints reported before 1:00 PM from the City to determine validity and, upon verification, shall arrange for collection before 7:00 PM that day. Justified complaints, reported by the City after 1:00 PM shall be investigated and serviced by the Contractor no later than 1:00 PM the following day, including Saturday, Sunday, and holidays.

2.12.3. On second notice of an unresolved and justified complaint, the City may assess liquidated damages pursuant to Section 2.15 for each by address. Liquidated damages will be deducted from the Contractor's next monthly payment. Failure to maintain an acceptable level of service may invoke liquidated damages or, if acceptable resolutions are not reached, may be grounds to terminate the Contract. The Contractor will be allowed an initial sixty (60) day grace period without the City invoking liquidated damages.

2.12.4. The Contractor shall submit service completion reports to the City Administrator of Solid Waste Operations on a daily basis in a manner mutually agreed upon by the Contractor and the City. The Contractor shall be subject to inspections by the City and the Contractor agrees to comply with all reasonable requests for service improvement by the City.

## 2.13 RECORD KEEPING, AUDITING AND REPORTING

2.13.1. The City will pay for disposal of all waste generated by the services in this contract. The Contractor shall provide the City monthly volume reports by disposal facility, vehicle, and date by the 10<sup>th</sup> of the month or as agreed upon mutually. Additionally, the Contractor will not pay for recycling material delivered to the recycling designated facility. The Contractor shall provide the City monthly recycling load reports for verification purposes by the 10<sup>th</sup> of each month or as agreed upon mutually. The City will review monthly Contractor reports and monthly records from landfills, recycling facilities, and other designated facilities for accuracy.

2.13.2. The City reserves the right to audit the Contractor's records. The Contractor shall make and keep full and complete records and books as accounts of revenue and income, and costs and expenses that specifically relate to performance under this contract. Records and books of accounts, together with any or all other memoranda pertaining thereto that may be kept, maintained, or possessed by the Contractor, shall be open to examination during regular business hours by the City or its representatives for the purpose of inspecting, auditing verifying or copying the same or making extracts there from. The Contractor shall make and keep said records and books of accounts in accordance with generally accepted accounting principles.

## 2.14 PAYMENTS

2.14.1. Uniform Rates for Collection Services - The prices to be paid by the City for Collection Services shall be as proposed on the Bid Forms, as adjusted in accordance with Section 2.14.4 below, and shall be computed based on the number of containers assigned to each residential and commercial unit to which the Contractor provided such Collection Services during the month of this Contract. Charges for Collection Service under this Contract shall include all labor, equipment, maintenance, and transportation costs, taxes, and any applicable disposal fees not specified to be covered by City pursuant to this Agreement.

2.14.2. Payments to the Contractor by the City - The City will remit all payments due to the Contractor, monthly, no later than the 31<sup>st</sup> day after the month of billing period. Billings and payments will be based on the previous month's customer records maintained by Memphis Light Gas and Water Division, less performance damages, in accordance with the services outlined.

2.14.3. Payments to the Contractor by Residential and Commercial Customers - The Contractor shall be solely responsible for billing and collecting the fees for providing and delivering Garbage and Recycling Containers pursuant to Section 2.8.1.

2.14.4. Procedures for Adjustment of Annual Rates - Effective July 1, 2023, and the same date each year thereafter during the term of the Agreement, rates shall be adjusted as specified herein. Ninety percent (90%) of the rate shall be adjusted based on the percentage change in the Consumer Price Index between the month of February in the previous year and the month of February in the current year. Ten percent (10%) of the rate shall be adjusted based on the percentage change in the Fuel Price Index between the average monthly fuel price from February through January in the year prior, and the average monthly fuel price from February through January of the most current twelve (12) months. The total adjustment to the service rate in any given year shall not exceed five percent (5%) of the previous year's rate.

New Rate = Current Rate (CR)+ CPI Adjustment+ Fuel Adjustment

CPI Adjustment = Round  $(\text{CPI2}-\text{CPI1})/\text{CPI1} \times 0.90 \times \text{CR}$

Fuel Adjustment = Round  $(\text{FI2}-\text{FI1})/\text{FI1} \times 0.10 \times \text{CR}$

CR = Current Rate

CPI = Consumer Price Index for the South Urban Region, All Items – All Urban Wage Earners and Clerical Workers, as published by the United States Bureau of Labor Statistics (Series ID = CWUR0300SA0)

CPI1 = published CPI average for the month of February of the prior year

CPI2 = published CPI average for the month of February of the current year

FI = Fuel Index is the Midwest (PADD 2) No. 2 Diesel Ultra Low Sulfur (0 – 15 ppm) Retail Prices (Cents per Gallon), US Department of Energy, Energy Administration

FI1 = average published monthly fuel price from February through January of the year prior to FI2

FI2 = average published monthly fuel price from February through January of the most current 12 months

## 2.15 LIQUIDATED DAMAGES

2.15.1. Basis for Liquidated Damages - Because it is difficult and/or impossible to determine the resulting costs/damages to the City in the event of certain breaches by the Contractor, and the City could not be placed in a position as if no breach(as) has occurred, the liquidated damage amounts set forth below are stipulated and agreed under the circumstances, to be a fair and reasonable estimate of the City's potential cost/damages at the time the parties here extend into this Contract, and shall not be construed or otherwise considered a penalty addition to all other legal and equitable remedies of the City whether arising under this Agreement or Otherwise. Complaints received from Customers are considered Complaints for purposes of this Agreement, unless the Contractor can prove to the City's satisfaction, in its sole discretion, that the complaint is not warranted. Because it is anticipated that a contract will be executed prior to commencement of services, any liquidated damages accrued as outlined in Section 2.15.2.d) will be assessed on the first invoice of the Agreement.

### 2.15.2 Procedure for Assessing Liquidated Damages

- a) On a monthly basis the City shall review the performance of the Contractor and the assessment of any liquidated damages based on that performance. In conjunction with the monthly house count provided for billing purposes, the City will provide written notice of the liquidated damages to be assessed.
- b) The Contractor shall have five (5) operating days to provide evidence to protest, refute, or otherwise disprove the legitimacy of the complaints. The Company shall utilize and provide reporting from technology required in Section 2.9.2.c) to support any protest. The City, at its sole discretion, shall determine whether liquidated damages should be assessed. Any liquidated damages filed timely and determined to be substantiated will be assessed on the following month's payment.
- c) If a protest is not timely filed by the Contractor, or if the Director concludes that liquidated damages should be assessed, the City shall deduct the liquidated damages from the City's monthly payments to the Contractor.
- d) The Administrator of Solid Waste Operations shall assess liquidated damages as indicated below for failure to meet interim milestones set forth in Section 2.4.8.
  - i) Failure to hire the Contractor's District Manager by May 15, 2022. For each calendar day of delay, five hundred dollars (\$500) shall be assessed against the Contractor.

- ii) Failure to provide purchase orders or other documentation to the City confirming that all necessary Collection vehicles, equipment, and Collection Containers are ordered and will be delivered to the Contractor’s equipment yard no later than June 1, 2022, within thirty (30) days of notice of intent to award. For each calendar day of delay, One Thousand Dollars (\$1,000) shall be assessed against the Contractor.
  - iii) Failure to mail or deliver City-approved brochures and informational materials as required by Section 2.4.8. by June 20, 2022. For each calendar day of delay, One Thousand Dollars (\$1,000) shall be assessed against the Contractor.
  - iv) Failure to have the necessary Collection vehicles delivered to the Contractor’s equipment yard and ready for service (e.g., registered, licensed, and tagged) by June 1, 2022. For each calendar day of delay, Two Thousand Dollars (\$2,000) shall be assessed against the Contractor.
  - v) Failure to provide inventory confirmation of all Garbage and Recycling Containers necessary to provide service by June 1, 2022, as required in Section 2.8., shall result in an assessment of Fifty Dollars (\$50) per container missing from the requirement. This shall be assessed for each day of delay.
- e) Any exception to the dates above must be presented in writing no later than seven (7) working days prior to the deadline. The City in its sole discretion will make the final decision.

2.15.3. Liquidated Damages During Term of Agreement

- a) On the Commencement Date and throughout the remainder of the term of the Agreement, the City will assess the liquidated damages as outlined in this Section. Liquidated damages related to collections, as outlined in Section 2.15.3. will be waived for a period of sixty (60) days from the Commencement Date.
- b) Legitimate Complaints outlined in this section shall be assessed One Hundred Dollars (\$100) for each occurrence.
- c) Legitimate Complaints include, but are not limited to failure to collect the Garbage, Recycle, and Bulk Waste as described in Section 2.5.1., when properly presented for Collection by a Customer on the Scheduled Collection Day, within the deadlines set forth herein.
- d) After receiving oral or written notification by the City or Customer, liquidated damages are assessed when Legitimate Complaints in a calendar month exceed the totals in the table below:

Garbage + reasonable overflow	100 Complaints
Recyclables	50 Complaints
Yard Waste	75 Complaints
Carts/Service Quality (all other complaints)	100 complaints

- e) Failure to resolve a Complaint within the timeframe specified herein shall be treated as a separate Legitimate Complaint.
- f) Failure to replace or repair a damaged Collection Container, or failure to replace a stolen Collection Container, failure to exchange a Collection Container, or failure to deliver a new Collection

Container within the deadlines specified in this Agreement shall be treated as a Legitimate Complaint.

- g) Failure to clean up spilled liquids or fluids, Solid Waste, litter, or other material in compliance with the requirements in this Agreement, within the deadlines set forth shall be treated as a Legitimate Complaint.
- h) Failure to return or properly place a Collection Container in the location specified shall be treated as a separate Legitimate Complaint.
- i) Failure to repair damage to a customer's property within the deadlines set forth in this Agreement, with each day after receiving notification shall be treated as a separate Legitimate Complaint.
- j) If the Contractor notifies the City that a complaint has been resolved, when the complaint has not been resolved, it will be reopened and treated as a second Legitimate Complaint.
- k) In addition, pursuant to the requirements of this Agreement, the following items will result in the assessment of liquidated damages as outlined below:
  - i) Mixing Source Separated Recyclable Materials with Solid Waste, or mixing any other materials that are required to be collected separately, shall result in the assessment of Five Hundred Dollar (\$500) per occurrence.
  - ii) Should the Contractor intentionally or unintentionally deliver unauthorized waste (generated outside the contract area) to any of the disposal facilities whereby the City is billed for said loads, the Contractor will be assessed a penalty of \$2,500 for the first load (partial or whole) and \$5,000 for any subsequent loads (partial or whole).
  - iii) Failure to timely file any report, plan, or other document required herein shall result in the assessment of a One Hundred Dollar (\$100) assessment.
  - iv) Collections outside of the hours specified in this Agreement, without prior approval of the Director, shall result in a One Hundred Dollar (\$100) assessment per incident per calendar day.
  - v) Failure to correct chronic Collection problems shall result in a Two Hundred Dollar (\$250) assessment. Chronic shall mean four (4) or more Complaints at the same Premises for the same issue within a twelve (12) month period. The first assessment shall be completed for the fourth Complaint. Additional assessments may be completed for each Complaint thereafter.
  - vi) Failure to display the Contractor's name, telephone number, and identification number on a Collection vehicle in the manner specified herein, shall result in an assessment of One Hundred Dollars (\$100) per incident, per day.
  - vii) Leaving Collection Containers where they block driveways, mailboxes, streets, or roads shall result in a Fifty Dollar (\$50) assessment per incident.
  - viii) Damage to public or private roadways, including but not limited to spills of oil and hydraulic fluids, shall result in a Two Hundred Fifty Dollar (\$250) assessment per occurrence.
- l) All violations of the terms of this agreement as outlined in Section 2.15. above and Complaints are received from Customers (via email, phone, text, web, personal visit, etc.), through employees' visual inspection, or obtained through other means shall be considered in the assessment of liquidated damages. In the event that the Contractor is able to provide documentation through the service verification system, as described in Section 2.9.2., that demonstrates the Complaint is without merit. Such documentation shall be reviewed by the City and, its sole discretion, shall make a determination on the inclusion of the Complaint in the assessment of liquidated damages.

## 2.16 TERMINATION

All terms and conditions of this Contract are considered material and failure to perform any of said terms and conditions, on the part of the Contractor, shall be considered a breach of Contract. Should the Contractor fail to perform any of the said terms or conditions, the City shall have the right to terminate the Contract.

## 2.17 INDEMNIFICATION BY CONTRACTOR

The Contractor hereby agrees to protect, indemnify and save harmless, the City from and against any and all loss, expense, damage, charges and costs (including court costs and attorney fees) for injury to or death of person and injury to or destruction of property suffered or alleged to have been suffered as a result of any act or omission on the part of the Contractor or others whose services are engaged by the Contractor or anyone directly or indirectly employed or controlled by either of them in the course of the performance of the work provided for in the Contract, except such injury, destruction or death as may be caused solely by the negligence or fault of the City.

## 2.18 INSURANCE REQUIREMENTS

The Company shall not commence any work under this contract until it has obtained and caused its subcontractors to procure and keep in force all insurance required. The Company shall require all subcontractors to carry insurance as outlined below, in case they are not protected by the policies carried by the Company. The Company is required to provide copies of the insurance policies upon request. The Company shall furnish the Risk Manager a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the City of Memphis and licensed in the state of Tennessee with a Best Insurance Rating of A and Class VII or better and authorized to do business in the state where the work is performed.

If any of the Insurance Requirements are non-renewed at the expiration dates, payment to the company may be withheld until those requirements have been met, or at the option of the City. The City may pay the renewal premiums and withhold such payments from any monies due the Company.

The Company shall indemnify, defend, save and hold harmless the City, its officers, employees, and agents, from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character arising out of or in connection with the breach of this Agreement by Company, its employees, subcontractors, or agents, or any negligent act or omission of Company, its employees, subcontractors, or agents, which occurs pursuant to the performance of this Agreement, and this indemnification shall survive the expiration or earlier termination of this Agreement. The provisions of this paragraph shall not apply to any loss or damage caused solely by the acts, errors, or omissions of the City, its officers, employees, and agents. Contracts for third party service providers should include indemnity provisions that protect the City from any liability arising out of the Company's loss of City's sensitive information.



Each certificate or policy shall require and state in writing the following clauses:

**Company shall provide notice to the City within three (3) business days following receipt of any notice of cancellation or material change in Company's insurance policy from Company's insurer. Such notice shall be provided to City by registered mail, to the following addresses:**

City of Memphis  
Attn: Risk Management  
170 N. Main St., 5<sup>th</sup> Floor  
Memphis, TN 38103

City of Memphis  
Attn: Purchasing Agent  
125 North Main, Room 354  
Memphis, TN 38103

The Certificate of Insurance shall state the following: "The City of Memphis, its officials, agents, employees and representatives shall be named as additional insured on all liability policies." The additional insured endorsements shall be attached to the Certificate of Insurance and the Certificate of Insurance shall also state: "The additional insured endorsement is attached to the Certificate of Insurance."

**WORKERS COMPENSATION:**

The Company shall maintain in force Workers' Compensation coverage in accordance with the Statutory Requirements and Minimum Limits of the State of Tennessee and shall require all subcontractors to do likewise.

Employer's Liability	\$100,000	Each Accident
	\$500,000	Disease-Policy Limit
	\$100,000	Disease-Each Employee

**AUTOMOBILE LIABILITY:**

Covering owned, non-owned, and hired vehicles with Minimum Limits of:

\$5,000,000 Each Occurrence – Combined Single Limits

**NOTE:** MCS-90 Endorsement – Auto Pollution and Remediation Legal Liability Coverage (ISO END 9948 or Equivalent)

**COMMERCIAL GENERAL LIABILITY:**

Commercial General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability Coverage with Minimum Limits of:

\$2,000,000	General Aggregate
\$2,000,000	Products-Completed Operations
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence (Bodily Injury & Property Damage)
\$ 50,000	Fire Damage any One Fire
\$ 5,000	Medical Expense any One Person

**ENVIRONMENTAL / POLLUTION LIABILITY (CONTRACTOR’S):**

With Minimum Limits of:

\$2,000,000 Each Claim  
\$4,000,000 General Aggregate

**The Company shall maintain such coverage for at least three (3) years from the termination or expiration of this agreement.**

**CYBER LIABILITY (“NETWORK SECURITY AND PRIVACY”):**

For losses arising out of the following areas:

- Privacy Liability
- Network Security Liability
- Media Liability
- Cyber Extortion
- Privacy Breach Response
- Customer Notification Expense
- Credit Monitoring Expense
- Business Interruption
- Regulatory Defense and Penalties including PCI Fines/Penalties if applicable
- Social Engineering

**The Company shall maintain such coverage for at least three (3) years from the termination or expiration of this agreement with Minimum Limits of:**

\$ 2,000,000 Each Claim / \$2,000,000 Aggregate

**UMBRELLA LIABILITY:**

With Minimum Limits of:

\$2,000,000 Each Occurrence / \$2,000,000 Aggregate

**PROPERTY INSURANCE:**

The Company shall be responsible for maintaining any and all property insurance on their own equipment and shall require all subcontractors to do likewise. The Company shall require all sub-contractors to carry insurance as outlined above, in case they are not protected by the policies carried by the Company.

The Company is required to provide copies of the insurance policies upon request.

**2.19 BOND REQUIREMENTS**

A Bid Bond (Exhibit 3) – An amount of five percent (5%) based on the first-year total of the base bid is required with the proposal. Failure to furnish the Bid Bond will cause the Bid to be rejected or otherwise not considered. Such Bid Bond shall remain valid for a minimum of (120) days from the Bid Deadline.

Such Bid Bond shall be forfeited if the Bidder fails to comply with any of the three (3) Bid Security requirements as follows:

1. Required to enter into a contract awarded to it by the City under this Bid request.
2. Required to deliver a payment and performance bond (Exhibit 3) as required by the Contract.
3. Required to refrain from any discussions, meetings, or other communications, written or oral (except for official Contract negotiations and publicly called City Meetings), with any City official during the time period after the Bid Submittal Deadline date until the Contract award date.

Performance Bond – Shall be required by the successful proposer and shall cover the term of the contract. Bond shall be issued in an amount equal to fifty percent (50%) of the estimated payments for the first term (year) of the Contract. The bond amount shall be adjusted annually throughout the life of the Contract to an amount equal to fifty percent (50%) of the actual payments for the preceding 12-month period.

In addition, Performance Bonds must be furnished by the selected bidder. The Bidder shall submit a Consent of Surety evidencing its ability to furnish the Performance Bonds. All bonds must be submitted on the forms provided herein and shall be accompanied by a certificate of the surety company certifying that the agent who executed the bond was authorized to bind the surety company as of the date of the bond. All bonds provided to the City shall be issued by a surety company licensed to do business in the State of Tennessee.

## 2.20 DURATION

This agreement shall not be binding upon the parties until it has been signed by the Contractor and then by the Authorized representatives of the City in accordance with applicable ordinances, laws, and regulations.

The initial Duration of this Agreement shall commence on or about July 1, 2022, and shall end of the earlier June 30, 2027, or until all goods/services herein have been provided to the City ("Initial Duration"), subject to the availability and appropriation of funds to finance the same and the successful operation of the program. The City shall have the option to extend the Initial Duration for one (1) additional five (5) year period (the "Option Period"), subject to the appropriation of funds by the Memphis City Council and mutual agreement of the parties. The Initial Term and the exercised Option period are collectively referred to hereinafter as the "Duration."

## 3. PROPOSAL RESPONSE

This Section describes the contents of Proposer's Proposal and provides an outline of how the Proposer should organize it. Proposer's Proposal will not be considered responsive unless it fully complies with the requirements in this Section, as well as the additional instructions provided in Section 4.5 regarding the required Proposal formats and submission process.

Specifically, Proposer's Proposal shall include each of the sections referenced in the table below. The preferred method of submittal is in a three-ring binder with tabbed sections. The requirements for each of these Proposal sections are described in more detail in this Section.

**PROPOSER'S PROPOSAL WILL BE DISQUALIFIED FROM THIS RFP PROCESS IF THE PROPOSER FAILS TO CONFORM TO THE PROPOSAL INSTRUCTIONS IN THIS SECTION.**

<b>Sections and Topics</b>
Section 1 – Cover Letter
Section 2 – Relevant Experience & References
Section 3 – Resumes
Section 4 – Transition Plan
Section 5 – Interim Milestones Deadlines for Contractor’s Transition Planning
Section 6 – Collection Plan
Section 7 – List of Collection Vehicles
Section 8 – List of Safety Violations in the Last 5 Years
Section 9 – Financial Statement
Section 10 – Equal Business Opportunities (EBO) Program Requirements
Section 11 – Pricing
Section 12 – Bond Requirements
Section 13 – Non-Collusion Affidavit
Section 14 – Criminal and Civil Proceedings Discloser

**3.1 COVER LETTER**

Proposer’s Proposal shall contain a cover letter acknowledging Proposer's understanding of the RFP process and requirements set forth in this RFP, including its commitment to its Proposal. The cover letter shall be signed by an authorized representative of Proposer's company.

Provide agency’s name, address, web address, telephone, and fax numbers. Please include name, title and e-mail address of the individual who will serve as agency’s primary contact. Describe your agency’s ownership.

**3.2 RELEVANT EXPERIENCE & REFERENCES**

Proposer shall provide a detailed list of all municipal garbage collection projects performed over the last five (5) years. Included in this experience information should be three (3) references (names and phone numbers) from municipalities (city or county) where the proposer has provided solid waste collection services, including a description of the services provided, number of residences serviced, monetary value of contract, term of contract & whether your company is a prime or a subcontractor. Please see

Section 2.4 for more details.

### 3.3 RESUMES

Proposer shall provide resumes of the proposing company's local management and supervisory personnel, including proof of management personnel having a minimum of four (4) years of municipal solid waste collection experience. Please see Section 2.4 for more details.

### 3.4 TRANSITION PLAN

Proposer shall provide a comprehensive document describing in detail the activities that will be undertaken, and the schedule that will be followed, by the Contractor to ensure that the Contractor provides Collection Service in compliance with this Agreement beginning on the Commencement Date. Please see Section 2.4.8. for more details.

### 3.5 INTERIM MILESTONES DEADLINES FOR CONTRACTOR'S TRANSITION PLANNING

The Interim Milestones Deadline for Contractor's Transition Planning for this project are listed in section 2.4.8.

### 3.6 COLLECTION PLAN

The Collection Plan for this project are listed at section 2.4.9.

### 3.7 LIST OF COLLECTION VEHICLES

Proposer shall provide a list of vehicles that shall be used for the execution of services in the intended service areas. List shall include what vehicles are on hand or will be able to acquire in time for City inspection thirty (30) days before commencement of services. Vehicles should be listed by the number, type (automated, semi-automated packers and recyclers etc.) year/make/model/size.

### 3.8 LIST OF SAFETY VIOLATIONS IN THE LAST 5 YEARS

Proposer shall provide a list of recordable safety violations and/or accidents in the last 5 years.

### 3.9 FINANCIAL STATEMENT

Proposer shall provide a copy of the latest certified financial statement of the proposer (or parent company if the individual subsidiary or division financial statements are not prepared and generally available) by a firm of independent certified public accountants. Please see Section 2.4.3 for more details.

### 3.10 EQUAL BUSINESS OPPORTUNITY (EBO) PROGRAM REQUIREMENTS

Proposer shall provide a complete participation plan or well documented good faith efforts. See the following sections for descriptions and formats.

### **Equal Business Opportunity Program**

This contract will be subject to the requirements of the City of Memphis Ordinance #5384 which establishes the Equal Business Opportunity (“EBO”) Program. It is up to the Respondent to ensure that all requirements of this ordinance are met. The Ordinance may be accessed on the City’s website at [www.memphistn.gov](http://www.memphistn.gov) under “Doing Business.” The intent of the EBO Program is to increase the participation of locally owned minority and women owned business enterprises (“M/WBE”) in the City’s purchasing activities. **Toward achieving this objective, the Respondent is expected to put forth its best effort to include M/WBE participation in its response to this solicitation.**

### **Participation Plan**

The Participation Plan must include: (1) level and dollar amount of participation your firm anticipates achieving in the performance of contract resulting from this RFP; (2) the type of work to be performed by the M/WBE participation; and (3) the names of the M/WBEs the Respondent plans to utilize in the performance of the contract resulting from this RFP.

### **Good Faith Efforts Documentation**

If a Respondent proposes no M/WBE participation, the Respondent must, at the time of the response, submit a Good Faith Efforts statement accompanied by the appropriate documentation justifying its failure to include M/WBE participation. The ability of the Respondent to perform the work with its own work force will not in itself excuse the Respondent from making good faith efforts for M/WBE participation. The determination of whether a Respondent has made a good faith effort will be made by the City’s Contract Compliance Officer, Director of Finance, and the Purchasing Agent, prior to the award of the project.

### **Eligible M/WBE Firms**

To qualify as an M/WBE firm, per the requirements of City of Memphis Ordinance #5384, a firm must be included on the City’s list of certified M/WBE firms. One or a combination of several M/WBEs may be utilized.

Requests for verification must be submitted to the City’s Contract Compliance Office listed below:

City of Memphis; Ken Moody  
Phone 901-636-6210; Fax 901-636-6560  
Business Diversity & Compliance  
125 North Main Street, Suite 546  
Memphis, TN 38103

### **3.11 PRICING**

Please use the price form provided in Exhibit 2.

### **3.12 BID BOND**

A Bid Bond (Exhibit 3) – An amount of five percent (5%) based on the first-year total of the base bid is required with the proposal. Failure to furnish the Bid Bond will cause the Bid to be rejected or otherwise not considered. Such Bid Bond shall remain valid for a minimum of 120 days from the Bid Deadline. Such Bid Bond shall be forfeited if the Bidder fails to comply with any of the three (3) Bid Security requirements as follows:

1. Required to enter into a contract awarded to it by the City under this Bid request.
2. Required to deliver a payment and performance bond (Exhibit 3) as required by the Contract.
3. Required to refrain from any discussions, meetings, or other communications, written or oral (except for official Contract negotiations and publicly called City Meetings), with any City official during the time period after the Bid Submittal Deadline date until the Contract award date.

### 3.13 NON-COLLUSION AFFIDAVIT

Please use the form provided in Exhibit 4.

### 3.14 CRIMINAL AND CIVIL PROCEEDINGS DISCLOSURE

Please use the form provided in Exhibit 5.

## 4. INSTRUCTIONS ON RFP PROCESS

### 4.1 USE OF INFORMATION

**All correspondence about this RFP and the Initiative should be limited to the Principal Contact listed in Section 4.2 or other designated City personnel or agents.**

### 4.2 PRINCIPAL CONTACT AND INFORMATION REQUESTS

**Tim Boyles** is the single point of contact (the “Principal Contact”) for all matters relating to this RFP. Proposer should direct all inquiries to the Principal Contact at:

[tim.boyles@memphistn.gov](mailto:tim.boyles@memphistn.gov) and [Brynn.wiswall@memphistn.gov](mailto:Brynn.wiswall@memphistn.gov)

Proposer should not, under any circumstances, contact any City personnel (including senior City management or City employees with whom Proposer has an existing business or personal relationship) to discuss this RFP without the Principal Contact’s prior written consent. Utmost discretion is expected of Proposer and all other RFP recipients. Any recipient attempting to circumvent this process will risk elimination from further participation in the bidding process.

### 4.3 SCHEDULE OF ACTIVITIES

In order to accelerate the business transformation, service improvements and cost savings the City anticipates, the City has developed an estimated timeline for this Initiative. The City will move as quickly

and efficiently as possible to determine the feasibility of each Proposer's Proposal and to move forward with term sheet discussions and ultimately conclude an agreement accordingly.

As a result, the City requests that Proposer make a dedicated team available to participate in the proposal development and evaluation processes as necessary to participate in the activities and meet the deadlines provided in the table below.

It is the City's option to conduct interviews with finalists. However, in no way is the City obligated to interview finalists.

The City reserves the right to modify or update this schedule at any point in time.

**In no event shall the deadline for submission of the proposal be changed except by written modification by the City of Memphis Purchasing Department.**

<b>Activity</b>	<b>Date</b>
Publish RFP	December 14, 2021
Proposer Questions Deadline (5pm)	December 22, 2021
City Response to Questions (Addendum)	December 30, 2021
Proposal Submission Deadline (12pm)	January 19, 2022
Finalist Selections	February 2, 2022
Issue Notice of Intent to Award	February 16, 2022

Several of the activities identified in the above table are described in more detail in the remainder of Section 4.

#### 4.4 INITIAL QUESTIONS SUBMISSION, FINAL QUESTIONS SUBMISSION

Proposer may submit an initial set of questions based on its review of this RFP, by adhering to the format template provided in Exhibit 7 and submitted as an attached WORD document or as part of the body of the email (no pdf documents) and sending it via email by 5:00 pm on the date listed in Section 4.3 Schedule of Activities. Questions received after this time and date will not be answered. This email should be sent to the individual(s) listed in Section 4.2 Principal Contacts and Information Requests, with the subject heading: "Your company's name – RFP #52515- RFP Name – Questions." The City will post the responses to the questions on the City's web site on or before the date listed in Section 4.3 Schedule of Activities. To ensure the fair and consistent distribution of information, no individual answers will be given. The only official answer or position of the City will be the one posted via the City's website. Any questions or concerns not submitted by the stated time and date will be deemed waived.



## 4.5 PROPOSAL SUBMISSIONS

### PROPOSAL SUBMISSION AND DUE DATE

Proposer shall submit, in a sealed packet, one (1) original (clearly marked on the outside of the binder as “ORIGINAL”), five (5) complete printed copies, and two (2) thumb drives containing softcopies of its entire Proposal (including the signed Cover Letters) on or before the date specified in Section 4.3 Schedule of Activities **at 12:00 noon CT**, to the addressee provided below:

**USPS (or another common carrier)**  
**City of Memphis**  
**Purchasing Department, Room 354**  
**125 N. Main Street**  
**Memphis, TN 38103**

**Hand Delivery**  
**City of Memphis**  
**Main Lobby – Bid Drop Box**  
**125 N. Main Street**  
**Memphis, TN 38103**

The label should identify the contents as:

**Your company name & address.**  
**RFP Title, RFP #52515**

**PROPOSALS SUBMITTED AFTER THE DEADLINE OR WHICH STATE THAT INFORMATION WILL BE PROVIDED ‘AT A LATER DATE,’ OR WHICH ARE OTHERWISE INCOMPLETE OR FAIL TO COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS RFP WILL BE DISQUALIFIED FROM PARTICIPATION IN THIS RFP PROCESS.**

Proposals may not be amended after the submission deadline.

Notwithstanding any legends on the proposal or any other statements to the contrary, all materials submitted in connection with the proposer’s response to this RFP will become the property of the City and may be returned only at the City’s option.

### PROPOSAL FORMAT

The City expects the Proposal to be a compilation of various documents because Proposer’s Proposal must utilize the RFP response templates, if provided, set forth in the Exhibits in this RFP.

Proposer shall use Microsoft Office file formats in preparing its Proposal to the maximum extent possible. All pages should be formatted to print on 8 ½” x 11” paper, unless another format is provided by the response template. Proposer responses should be specific, factual, brief and to the point.

### PROPOSAL EXPIRATION DATE

Proposals in response to this RFP shall remain valid for six (6) months from the Proposal due date. The City may request an extension of time if needed.

### PROPOSER DATA

The confidentiality of information and data contained in the firm of contractor's Proposal shall be subject to and governed by the Open Records Act and any other Public Records laws with which the City is legally obligated to comply (including a Freedom of Information Act Request under "FOIA").

#### **Deadline Extension**

The City reserves the right to extend the submission deadline if such action is considered necessary by the City.

#### **Ambiguity, Conflict, or other Errors in the RFP**

If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, it shall immediately notify, in writing e-mail, the City of such error and request modification or clarification of the document. The Proposer shall include the RFP number, page number and the applicable paragraph title. The City will issue/post any revisions to the RFP on the City's website ([www.memphistn.gov](http://www.memphistn.gov)). The Proposer is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposals prior to submitting the proposal or any ambiguity, conflict, discrepancy, etc. shall be waived.

#### **Withdrawing or Amending a Proposal**

At any time prior to the scheduled deadline for receipt of proposals, the Proposer may withdraw or amend its proposal by submitting a written request from the authorized representative whose name and signature appears on the proposal. A written request to withdraw or amend the proposal must be submitted to the individual and address to whom/which the proposal was submitted in accordance with the section above titled "PROPOSAL SUBMISSION AND DUE DATE."

#### **Acceptance/Rejection of Proposals**

The City reserves the right to accept or reject, in whole or in part, any or all proposals submitted. The City shall reject the proposal of any Proposer that is determined to be non-responsive.

#### **Informalities/Minor Irregularities**

The City reserves the right to waive minor irregularities or informalities in a Proposer's proposal when the City determines that it will be in the City's best interest to do so. Any such waiver shall not modify any remaining RFP specifications or excuse the Proposer from full compliance with the RFP specifications and other contract requirements if the Proposer is awarded the contract.

#### **Proposer indebted to the City**

No contract will be knowingly awarded to any organization which, in the City's sole discretion, is in arrears to the City of Memphis upon any debt or contract, or which is a defaulter as surety or otherwise under any obligations to the City of Memphis, or which has failed to perform faithfully on any previous contract with the City of Memphis.

#### **Tax Payments**

The City of Memphis is exempt from federal excise, state and local taxes on all purchases and will issue tax exemption certificates, upon request.

#### 4.6 FINALIST SELECTIONS (OPTIONAL)

The City may select RFP respondents to give an oral presentation of its proposal to the City. However, the City is not obligated to interview any finalist. If interviews are conducted, these providers will be selected based on an evaluation of their Proposals against the criteria described in Section 5 of this RFP. RFP recipients that are not selected to progress to the oral presentations likely will be excluded from further consideration.

For this reason, the Proposer is strongly encouraged to make as complete and compelling a Proposal as possible. The RFP recipient who fails to comply risks being dropped from further consideration without having an opportunity to improve its offer.

#### 4.7 RECIPIENT PRESENTATIONS (OPTIONAL)

Details pertaining to the oral presentation phase of the RFP process will be confirmed after Proposal submission, however the presentations are tentatively scheduled to begin on or about the date listed in Section 4.3 Schedule of Activities.

If Proposer is one of the RFP recipients asked to give an oral presentation, Proposer should prepare a comprehensive presentation that concentrates on the business and technical aspects of the Proposal and should not be marketing discussions. **PROPOSER'S PROPOSAL WILL NOT BE ALTERED OR ENHANCED DURING THE ORAL PRESENTATION.**

Appropriate visual and written materials are expected, but the format will be left to the discretion of the Proposer. A soft copy of all presentation materials must be delivered to the Principal Contact at least one business day before the beginning of the presentation. Proposer should also bring a sufficient number of printed copies of the materials for the City attendees at the presentation.

The City may provide a last-minute agenda or other direction for the Proposer's presentation based on the City's initial review of the Proposals.

#### 4.8 CONTRACT AWARD

The award of contract will be made on the basis of the best proposal, as solely determined by the City, which meets the requirements and criteria set forth in the solicitation. The proposal submitted in response to this solicitation is not a legally binding document; however, the contract, which will be based on information provided in the proposal, becomes legally binding once all parties have signed it. Any contract resulting from this RFP shall be subject to the City of Memphis General Terms and Conditions set forth in this solicitation and any additional terms imposed by the City. The successful Contractor shall be required to execute the contract originated by the City of Memphis and satisfy all contract requirements as specified by the City. One or more contracts may be awarded under this RFP, and any contract awards and amounts are subject to the availability and appropriation of funds.

#### 4.9 PROTESTS

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days of the award announcement at the following address, or via email (Tim Boyles – [Tim.Boyles@memphistn.gov](mailto:Tim.Boyles@memphistn.gov)); with copy to Brynn Wiswall [Brynn.wiswall@memphistn.gov](mailto:Brynn.wiswall@memphistn.gov)

City of Memphis Purchasing Agent:

125 North Main, Room 354, Memphis, Tennessee 38103.

#### 4.10 MODIFICATION OR TERMINATION OF RFP PROCESS

Subject to the rules and regulations of the City’s Procurement Office, including with respect to providing notification and, where applicable, providing the opportunity to revise proposals, the City reserves the right to, in its sole discretion, discontinue, amend, supplement, or otherwise change this RFP, the initiative, the process used for evaluation, and the expected timeline at any time and for any reason, and makes no commitments, implied or otherwise, that this process will result in a business transaction with any provider.

#### 4.11 SUPPLEMENTAL INFORMATION

If, subsequent to issuance of this RFP, additional relevant material is produced by or becomes available to the City, such material will (where appropriate) be transmitted to all RFP participants for their consideration. The City will make modifications by issuing a written addendum, which will be posted on the City’s website. Any revisions to the solicitation will be made only by an addendum issued by the City. It is the responsibility of the Proposer to check the website for possible addenda and should consider such information in its Proposal. The City will assume that all changes or additional requirements transmitted have been taken into account in Proposer’s Proposal (including with respect to pricing), unless otherwise specified.

#### 4.12 NO REPRESENTATIONS OR WARRANTIES

The City makes no representations or warranties regarding the accuracy or completeness of the information contained in this RFP or otherwise provided by the City through the RFP process. Proposer is responsible for making its own evaluation of information and data contained in this RFP or otherwise provided by the City, and for preparing and submitting responses to the RFP. The City has attempted to validate the information provided in this RFP, but it is possible that the Proposer may detect inconsistencies or potential errors. While Proposer should identify these potential issues in its questions or in an appendix to its Proposal, Proposer should use the information provided on an “as-is” basis for its initial Proposal. Information regarding the City and the Initiative may be revised or updated and republished for inclusion in a final response.

#### 4.13 PROPOSAL PREPARATION COSTS

Proposer will be responsible for all costs it incurs in connection with this RFP process (including but not limited to Proposal preparation, personnel time, travel-related costs, and other expenses) and any subsequent agreement negotiations.

## 5. EVALUATION MODEL

### 5.1 QUALIFYING PROPOSALS

City will review each submitted Proposal to determine whether it is a Qualifying Proposal. A Qualifying Proposal is one that meets all the criteria set forth below. All Proposals that ARE NOT a Qualifying Proposal will be disqualified from this RFP process. A Qualifying Proposal is a Proposal that:

- Was submitted (in the form and format required) by the due date as specified in Section 4.6.
- Conforms to the requirements of the RFP (as outlined in Section 3).

### 5.2 EVALUATION OF QUALIFYING PROPOSALS

An evaluation team composed of representatives of the City will evaluate proposals on a variety of quantitative and qualitative criteria. The criteria, and their associated point values, upon which the evaluation of the proposals will be based, is attached as Exhibit 6.

## 6. RFP TERMS AND CONDITIONS

The City of Memphis seeks proposals from firms who have the expertise to provide to provide the products and/or services as is in accordance with this RFP document. This is a Request for Proposal that may be modified by the City in the selection process.

THE CITY OF MEMPHIS ENCOURAGES THE PARTICIPATION OF SMALL, MINORITY AND WOMEN-OWNED BUSINESSES IN THE PURCHASING PROCESS.

The City of Memphis is an Equal Opportunity Employer and does not discriminate on the basis of race, color, national origin, sex, religion, age, or handicap status in employment or in the provision of services.

This procurement may be subject to the requirements of Ordinance No. 5114 which establishes a local preference for local businesses located within the City of Memphis. A copy of your current Memphis and Shelby County Tennessee Business Tax Receipt must accompany the proposal for consideration of this ordinance.

Any protest of award must be filed in with the Purchasing Agent pursuant to Section 4.9 Protests. Notice of Intent to Award will be emailed to all vendors that submit a valid proposal. The intent to award notification shall be deemed publicly announced on the date specified on the notice.

Only proposals submitted on the provided form(s) with no changes, additions or deletions to the terms and conditions will be considered. Proposals containing terms and conditions other than those contained herein may be considered nonconforming.

No objections with regard to the application, meaning, or interpretation of the specifications will be considered after the opening of the subject proposals. If there are questions or concerns regarding any part of plans, terms, specifications or other proposed documents, a written request for interpretation thereof may be submitted to the City Purchasing Agent prior to the deadline date, pursuant to Section 4.4 Initial Questions Submission, Final Questions Submission. The organization submitting the request shall be responsible for the prompt delivery of the request. Any interpretation in response to the written request will be made only by addendum duly issued, and a copy of such addendum will be mailed or delivered to each organization receiving a set of such documents and/or posted on the City's website. The City of Memphis will not be responsible for any other explanation or interpretation of the proposed documents. By submission of its proposal, a proposer shall be deemed to have understood fully the contents and meaning of the RFP.

All proposals must be signed by an authorized representative of your organization. Unsigned proposals will be considered nonconforming.

Any contract resulting from the proposals received in response to this solicitation shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee without regard to conflicts of laws principles.

By order of the Mayor of the City of Memphis, Tennessee.

**JIM STRICKLAND, MAYOR**

Tim Boyles, City Purchasing Agent

Published in The Daily News on December 14<sup>th</sup> and 15<sup>th</sup> 2 Copies

#### **INSTRUCTIONS TO PROPOSERS**

Proposers shall submit their signed proposal in a sealed envelope INDICATING ON THE OUTSIDE: THE COMPANY NAME and THE REQUEST FOR PROPOSAL NUMBER.

Proposers must comply with all applicable licensing requirements. Pursuant to the City of Memphis Charter, Article 71, Section 777 et seq., it is unlawful to operate a business within the limits of the city of Memphis without possessing a Memphis and Shelby County business license, excepting non-profit organizations that qualify as tax exempt under Sec. 501©(3) of the Internal Revenue Code. Upon award notification and prior to the City issuing a properly executed purchase order or entering into a contract with the proposer, the successful proposer, whose principal business address is located within the limits of the city of Memphis, will be required to submit, along with the required insurance and other required documentation, a copy of (1) the tax-exempt ruling or determination letter from the Internal Revenue Services; or (2) its current Memphis and Shelby County Business Tax Receipt/License.

Issuance of this RFP does not obligate the City to contract, in whole or in part, for services specified herein. The City of Memphis reserves the right to cancel this solicitation, in whole or in part, or to reject,

in whole or in part, any and all proposals. Bidders will be notified of any cancellation, and cancellation of this RFP or any subsequent award will be posted on the City's website.

To request additional information concerning this solicitation, please see Section 4.4 Initial Questions Submission, Final Questions Submission.

This solicitation shall be in accordance with the City of Memphis Ordinances and Purchasing Policies and Procedures, which may be amended from time to time.

All materials submitted pursuant to this RFP shall become the property of the City of Memphis.

To the extent permitted by law, all proposals submitted in response to this RFP shall be kept confidential until the proposals have been evaluated and the intent to award is announced. Until the intent to award is announced, no information regarding any proposal will be released to anyone, except members of the Evaluation Committee who are responsible for evaluating the proposals and other appropriate City staff. All information provided by the Proposer in response to this RFP will be considered by the Evaluation Committee in evaluating the proposal and making an award recommendation to the City.

The Mayor of the City of Memphis is the only individual who can legally sign contracts on behalf of the City. Costs chargeable to the proposed contract shall not be incurred before receipt of a fully executed contract.

**EXHIBITS**

**EXHIBIT 1 – EQUAL BUSINESS OPPORTUNITY (EBO) PROGRAM REQUIREMENTS**

**CITY OF MEMPHIS  
EQUAL BUSINESS OPPORTUNITY PROGRAM COMPLIANCE FORM**

**PROJECT TITLE:** \_\_\_\_\_

**Project M/WBE GOAL:** \_\_\_%

The following sections must be completed by bidder. A certified subcontractor or supplier is defined as a firm from the list of certified firms provided with this specification \_\_  
Bidder's Name

Section A - If the bidder is a certified firm, so indicate here with a check mark.

\_\_\_\_\_ MBE \_\_\_\_\_ WBE

Section B - Identify below those certified firms that will be employed as subcontractors or suppliers on this project. By submitting this bid, the bidder commits to the use of the firms listed below.

\$ = Show the dollar value of the subcontract to be awarded to this firm

% = Show the percentage this subcontract is of your base bid

M/WBE = Show by inserting an M or W whether the subcontractor is an MBE or WBE

\$ / %	M/WBE	SERVICE	CERTIFIED SUBCONTR. NAME, ADDRESS, TEL. #

Total	\$	%
MBE		
WBE		

**THIS FORM and SUPPORTING DOCUMENTATION MUST BE SUBMITTED WITH THE BID OR THE BID WILL BE CONSIDERED NON-CONFORMING.**

**CITY OF MEMPHIS  
GOOD FAITH EFFORT DOCUMENTATION FORM**



To The Honorable Mayor City of Memphis, Tennessee  
From:

PROPOSER NAME \_\_\_\_\_

PROJECT TITLE: XXXXXXXXXXXXXXXXXXXXX

Enclosed please find the required documents:

Said Bidder \_\_\_\_ did / or \_\_\_\_ did not attend the project pre-bid meeting.

**\*Copies of all written notification to City of Memphis M/WBE listed firms. (Please attach list of all firms notified, detail how they were notified and when).**

Said Bidder \_\_\_\_\_ did / or \_\_\_\_ did not select economically feasible portions of the work to be performed by M/WBE firms.

**\*List all M/WBE firms with which negotiations took place. (Attach list. If no negotiations were held, please state so.) Provide names, addresses, and dates of negotiations.**

**\*Statement of efforts to assist M/WBE firms, with bonding, insurance, financing, or with document review. (Attach list. If no assistance was provided, please state so.)**

The Bidder \_\_\_\_ did / or \_\_\_\_ did not use all M/WBE quotations received. If the Bidder did not use all M/WBE quotations received, list on attached sheets, as required as to the reasons those quotes were not used.

**\*List (on attached sheets as required) all M/WBE firms contacted that the bidder considered not to be qualified, and a statement of the reasons for the bidder's conclusions. If no firms were found to be non-qualified, please state so.**

THIS SIGNED FORM AND REQUESTED DOCUMENTATION (noted by an asterisk '\*\*') MUST BE SUBMITTED WITH THE BID IF THE BIDDER DOES NOT MEET THE REQUIRED M/WBE PROJECT GOAL. IF REQUESTED DOCUMENTATION IS NOT SUBMITTED THE BID WILL BE CONSIDERED NON-CONFORMING.

Contractor's Name

\_\_\_\_\_

## EXHIBIT 2 – PRICE FORM

City of Memphis Solid Waste Collection Bid Form

**Company Name:** \_\_\_\_\_

### RESIDENTIAL BID

Garbage Collection: <b>Weekly</b> Recyclables Collection: <b>Weekly</b> Bulk Waste Collection: <b>Bi-Monthly</b>	Monthly Rate Bid/Residential Customer  Residential Collection Customer Count: <b>35,579 locations</b>
# Garbage Carts Assigned: <b>1</b> # Recycle Carts Assigned: <b>1</b> Bulk Waste: <b>Bi-Monthly</b>	\$ _____  <b>x 33,673 locations</b>
# Garbage Carts Assigned: <b>2</b> # Recycle Carts Assigned: <b>1</b> Bulk Waste: <b>Bi-Monthly</b>	\$ _____  <b>x 1,829 locations</b>
# Garbage Carts Assigned: <b>3</b> # Recycle Carts Assigned: <b>1</b> Bulk Waste: <b>Bi-Monthly</b>	\$ _____  <b>x 77 locations</b>

\*Includes maintenance/replacement of garbage and recycle carts, for Area E.

### COMMERCIAL BID

Garbage Collection: <b>Weekly</b>	Monthly Rate Bid/Commercial Customer  Commercial Collection Customer Count: <b>306 locations</b>
# Garbage Carts Assigned: <b>2</b>	\$ _____  <b>x 302 locations</b>
# Garbage Carts Assigned: <b>4</b>	\$ _____  <b>x 4 locations</b>
# Garbage Carts Assigned: <b>6</b>	\$ _____  <b>x 0 locations</b>

\* Commercial customers are not eligible for recyclables and bulk waste collection. Includes maintenance/replacement of garbage and recycle carts, for Area E.

EXHIBIT 3 – BOND REQUIREMENTS

BID BOND

BID BOND KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, \_\_\_\_\_ (BIDDER) and \_\_\_\_\_ (SURETY) are held and firmly bound unto the City of Memphis, Tennessee in the penal sum of FIVE PERCENT (5%) for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns, firmly by these presents.

The conditions of the above obligation are such that whereas BIDDER has submitted to the CITY OF MEMPHIS a certain BID, attached hereto and hereby made a part hereof, to execute and enter into a certain CONTRACT ("Contract") for #52515 Solid Waste (PROJECT) in compliance with the CONTRACT DOCUMENTS.

NOW, THEREFORE,

- (a) If the BID shall be rejected, or
- (b) If the BID is accepted and the BIDDER enters into a Contract for said project with the CITY OF MEMPHIS within fifteen (15) days after receipt of the NOTICE OF AWARD accompanied by the Contract and all required attachments, then, this obligation shall be null and void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the SURETY for any and all claims hereunder shall, in no event, exceed the penal sum of this obligation as herein stated but the liability of the BIDDER is not so limited.

The SURETY, for value received, hereby stipulates, and agrees that the obligation of said SURETY on this, its BID BOND, shall in no way be impaired or released by any extension of the time within which the CITY OF MEMPHIS may accept such BID and the SURETY does hereby waive notice of any such extension.

WITNESS THE DUE EXECUTION HEREOF, on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

NAME OF BIDDER \_\_\_\_\_

BY: \_\_\_\_\_ Signature of BIDDER or Authorized Officer

Title: \_\_\_\_\_

NAME OF SURETY

BY: \_\_\_\_\_ Authorized Representative (Attach Power of Attorney

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that

\_\_\_\_\_ (Name of Contractor)

\_\_\_\_\_ (Address of Contractor)

a \_\_\_\_\_ (State of formation of CONTRACTOR) \_\_\_\_\_

(Corporation, Partnership, Limited Liability Company, Individual or Joint Venture—indicate which), hereinafter called CONTRACTOR,

And \_\_\_\_\_ (Name of Surety)

\_\_\_\_\_ (Address of Surety) hereinafter called SURETY,

are held and firmly bound unto

the City of Memphis, Tennessee, 125 N Main St, Memphis, Tennessee, hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, and our successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that, whereas, the CONTRACTOR has entered into a certain Contract for Services and/or Products ("Contract") with the OWNER, which is made a part hereof by reference, for the Project: Solid Waste, and if the CONTRACTOR shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise, same is to remain in full force and effect.

PROVIDED, FURTHER, that the said SURETY, for value received hereby, stipulates and agrees that no change, extension of time, modification, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way release its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, modification, alteration, or Solid Waste Disposal Bid pg. 49 addition to the terms of the Contract, to the work, or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied, and which is entitled to be satisfied by the CONTRACTOR and SURETY.

PROVIDED, FURTHER, that the CONTRACTOR and SURETY agree that any claim under this BOND may only be litigated in a court of competent jurisdiction in Memphis, Tennessee.

IN WITNESS WHEREOF, this instrument is duly executed this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

(CONTRACTOR) \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(SURETY) \_\_\_\_\_

By: \_\_\_\_\_ (Attorney-in-Fact)

Title: \_\_\_\_\_

Address: \_\_\_\_\_

**EXHIBIT 4 – NON-COLLUSION AFFIDAVIT**

The Proposer, by its officers and its agents or representatives present at the time of filing this Proposal, being duly sworn on their oaths say, that neither they nor any of them have in any way, directly or indirectly, entered into any arrangement or agreement with any other Proposer, or with any officer of the Owner or Owner’s representative whereby such affiant or affiants or either of them has paid or is to pay such other Proposer or officer any sum of money, or has given or is to give to such other Proposer or officer anything of value whatever, or such affiant or affiants or either of them has not directly or indirectly, entered into any arrangement or agreement with any other free competition into the letting of the contract sought for by the attached prices that no inducement of any form or character other than that which appears on the face of the Proposal will be suggested, offered, paid or delivered to any person whomsoever to influence the acceptance of the Proposal or awarding of the Contract, nor has this Proposer any agreement or understanding of any kind whatsoever, with any person whomsoever to pay, deliver to, or share with any other person in any way or manner, any of the proceeds of the Contractor sought by this Proposal.

Submitted By:

Firm Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

**SIGNATURES**

If PROPOSER is:

A. An Individual

By \_\_\_\_\_ (SEAL)

(Individual’s Name)

Doing business as \_\_\_\_\_

Business Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

B. A Partnership

By \_\_\_\_\_ (SEAL)

(Firm Name)

**(General Partner)**

**Business Address:**

---

---

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**Phone Number:** \_\_\_\_\_

**C. A Corporation**

**By** \_\_\_\_\_ **(SEAL)**

**(Corporation Name)**

**(State of Incorporation)**

**By** \_\_\_\_\_

**(Name of Person Authorized to Sign)**

**Title** \_\_\_\_\_

**Attest** \_\_\_\_\_

**(Secretary)**

**Business Address:**

---

---

---

**Phone Number:** \_\_\_\_\_

**D. A Joint Venture**

**By** \_\_\_\_\_ **(Name)**

**Business Address:**

---

---

---

By \_\_\_\_\_ (Name)

**Business Address:**

---

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**Each joint venture member must sign. The manner of signing for each individual partnership and corporation that is party to joint venture should be in manner indicated above.**

## EXHIBIT 5 – CRIMINAL AND CIVIL PROCEEDINGS DISCLOSURE

### PROPOSING FIRM'S DISCLOSURE OF CRIMINAL AND CIVIL PROCEEDINGS

Describe all ongoing and past civil and criminal proceedings within the last 10 years. Indicate the status of current proceeding and the outcome of closed or completed actions. Also, describe, if any, how the outcome of actions impacted company business operations. Attach additional pages if necessary.

Note: If no civil and criminal proceedings within the last 10 years, indicate here and return this attachment with your proposal.



**EXHIBIT 6 – EVALUATION CRITERIA**

<b>Evaluation Category</b>	<b>Questions/Areas of Evaluation within Categories</b>	<b>Possible Points per Question</b>	<b>Total Possible Points</b>
Experience and Qualifications			15
Section 3.2 & 3.9	<ul style="list-style-type: none"> <li>Respondent has been in business for a period that demonstrates sustained success, safety, and knowledge.</li> </ul>	5	
Section 3.10	<ul style="list-style-type: none"> <li>Respondent has the financial strength to satisfy contractual obligations.</li> </ul>	5	
Section 3.2	<ul style="list-style-type: none"> <li>Respondent provided relevant project experience that demonstrates sustained success and knowledge.</li> </ul>	5	
Technical Approach			35
Section 3.4	<ul style="list-style-type: none"> <li>Proposal demonstrates understanding of operational needs and challenges.</li> </ul>	10	
Section 3.6	<ul style="list-style-type: none"> <li>Staffing structure delineates roles and responsibilities sufficient to deliver on-time service, including but not limited to necessary management, drivers, labor, and support.</li> </ul>	10	
Section 3.7	<ul style="list-style-type: none"> <li>Proposal includes adequate equipment to collect garbage, recycle and bulk waste; as well as cart maintenance and replacement.</li> </ul>	15	
Schedule for Implementation			35
Section 3.4	<ul style="list-style-type: none"> <li>Schedule for equipment delivery meets or exceeds RFP criteria.</li> </ul>	10	
Section 3.6	<ul style="list-style-type: none"> <li>Schedule for employee hiring meets or exceeds RFP criteria.</li> </ul>	10	
Section 3.6	<ul style="list-style-type: none"> <li>Schedule for service implementation meets or exceeds RFP criteria.</li> </ul>	15	
Cost/Pricing			15
Section 3.12	<ul style="list-style-type: none"> <li>Pricing is realistic and competitive.</li> </ul>	10	
Section 3.12	<ul style="list-style-type: none"> <li>Pricing represents value to the City.</li> </ul>	5	
			100



EXHIBIT 8 – CITY OF MEMPHIS SERVICE AGREEMENT SAMPLE CONTRACT

**CITY OF MEMPHIS STANDARD CONTRACT FOR GOODS AND / OR SERVICES**

**PARTIES TO THE AGREEMENT.** This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **[@CONTRACTOR NAME@]**, ("Contractor") and the City of Memphis, a municipal corporation of the State of Tennessee, ("City").

**WITNESSETH**

**WHEREAS**, the City, by and through its Division of **[@DIVISION NAME@]** has the need for **[@SERVICES / GOODS TO BE PROVIDED@]**; and

**WHEREAS**, Contractor has the knowledge and expertise to provide such goods/services; and

**WHEREAS**, the parties desire to enter into an agreement setting forth the terms and conditions under which Contractor shall provide said goods/services;

**NOW THEREFORE**, for and in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the parties hereby agree as follows:

**PAYMENT TERMS AND CONDITIONS**

**DESCRIPTION OF GOODS / SCOPE OF SERVICES.** The goods / services to be provided in connection with this Agreement will include, but not be limited to, those items listed, if applicable, in the Request for Quote (RFQ)/Request for Proposal (RFP) and Contractor's response thereto, which are incorporated herein by reference and, if applicable, Exhibit **[@EXHIBIT IDENTIFICATION@]**, attached hereto and incorporated herein as if stated verbatim. Said goods / services shall be provided in accordance with the applicable terms and conditions set forth, if applicable, in the City solicitation, and it is understood and agreed among the parties that in the event of a variance between the terms and conditions of this Agreement and any amendment hereto and the terms and conditions contained, if applicable either in the solicitation document or the response thereto, the order of precedence shall be as follows: (1) This Agreement; (2) Contractor's response, if applicable; (3) City's solicitation, if applicable.

**TERM.** This Agreement shall not be binding upon the parties until it has been signed first by Contractor and then by the authorized representatives of the City in accordance with applicable ordinances, laws and regulations.

The Initial Term of this Agreement shall commence beginning **[@CONTRACT BEGIN DATE@]** and shall end on the earlier of **[@CONTRACT END DATE@]** or until all goods/services herein have been provided to the City ("Initial

Term"), subject to the availability and appropriation of funds to finance the same and the successful operation of the program.

The City shall have the option to extend the Initial Term for **[@NO. OF OPTION PERIODS@]** additional **[@LENGTH OF OPTION PERIOD@]** period(s) (the "Option Periods"), subject to the appropriation of funds by the Memphis City Council and mutual agreement of the parties, evidenced in writing. The Initial Term and the exercised Option Periods are collectively referred to hereinafter as the "Term."

Eligible costs authorized by the City and incurred after the Initial Term begins, but prior to the execution of this Agreement, shall be paid under this Agreement.

**INVOICES.** Contractor shall submit original invoices, or copies of original invoices certified as such by Contractor, on Contractor's letterhead and in form and substance acceptable by the City and with all necessary supporting documentation, to the City. Contractor shall invoice in duplicate, if requested. The invoice shall describe the goods (the items sold) or services provided, list the price per unit, reflect any applicable terms of payment, and show the contract number to which it relates. Unless the contract number is shown on the invoice, it may be returned to Contractor. Invoices shall be submitted to: **[@DIVISION NAME@]**, **[@INVOICE ADDRESS@]**; Memphis, Tennessee **[@ZIP CODE - INVOICE@]**; Attn: **[@CITY CONTACT/REPRESENTATIVE@]**.

**COMPENSATION.** Unless City has good faith and reasonable objections to Contractor's invoice(s), the City shall compensate Contractor, based on invoices submitted by Contractor in accordance with the terms of this Agreement, the sum total **[@CHOOSE NOT TO EXCEED OR ESTIMATED TO BE@]** \$**[@CONTRACT AMOUNT@]** (the "Fee") during the Initial Term of the Agreement, which shall include all reimbursable expenses/cost. The City shall use its best efforts to remit payment based on Contractor's invoice within thirty (30) days after receipt of accurate invoice and approval by the City. The City is not obligated to pay, and may withhold from payment, any amounts the City has in dispute with Contractor based on Contractor's non-performance/delivery, unsatisfactory performance/delivery or negligent performance/delivery of any services or goods hereunder.

City reserves the right to review all Charges billed and incurred on a monthly basis.

**COMPENSATION FOR CORRECTIONS.** No compensation shall be due or payable to Contractor pursuant to this Agreement for any of the goods delivered or services performed by Contractor to correct goods delivered or services performed, when such corrections are required as a direct result of negligence by Contractor to properly fulfill any of its obligations herein.

**TRAVEL EXPENSES.** Where travel expenses are otherwise allowed and payable herein, such travel expenses shall be in accordance with the City's Travel Policy and Procedures, as may be amended from time to time. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the City.

**TAX PAYMENTS.** The City of Memphis is exempt from federal excise, state and local taxes on all purchases and upon request will issue tax exemption certificates to Contractor. Contractor shall be solely responsible and liable for

any taxes and business license fees assessed or imposed by any government having jurisdiction over the services and/or goods to be provided herein.

**PAYMENT DOES NOT IMPLY ACCEPTANCE OF GOOD/SERVICE.** The payment of an invoice shall not prejudice the City's right to object to or question any invoice or matter in relation thereto. Such payment by the City shall neither be construed as acceptance of the good/service nor as final approval of any of the costs invoiced therein, and the City's payment shall not relieve Contractor from its obligation to replace or correct any good/service that do not conform to this Agreement, even if the unsatisfactory character of such good/service may have been apparent or detected at the time such payment was made. Good/service, data or components that do not conform to the requirements of this Agreement shall be rejected by the City and replaced by Contractor, without delay or additional cost to the City.

If Contractor receives payment from the City for good/service or reimbursement(s) that is later disallowed or rejected by the City (or another governmental entity on the basis of audit or monitoring), Contractor shall promptly refund the disallowed amount to the City upon the City's request. At its option, the City may offset the amount disallowed from any payment due to Contractor under this Agreement or any other agreement.

**FINAL CONTRACT INVOICE.** Contractor shall submit to the City a final contract invoice within 45 calendar days from the termination date of the Agreement, for any goods/services provided pursuant to this Agreement. Contractor further acknowledges and agrees the City will not be responsible for any Contractor invoices, pertaining to this Agreement, submitted to the City after the final contract invoice. Contractor shall close out its accounting records at the end of the Agreement period in such a manner that reimbursable expenditures and revenue collections, related to this Agreement, are NOT carried forward.

## **GENERAL TERMS AND CONDITIONS**

**AMENDMENT.** This Agreement may be modified or amended only by a written amendment executed by all parties hereto and approved by the appropriate City officials in accordance with applicable laws and regulations.

**ASSIGNMENT, SUBCONTRACTING, or TRANSFER.** Contractor shall not subcontract, assign, delegate, or transfer all or part of its rights, responsibilities, or interest under this Agreement without the prior written consent of the City. Any purported assignment, transfer, or delegation in violation of this Section shall be voidable by the City. No subcontracting, assignment, delegation, or transfer shall relieve Contractor from performance of its duties hereunder; neither shall the City be responsible for the fulfillment of Contractor's obligations to its transferors or subcontractors. Upon request of the City, the subcontracting, assigning, delegating, or transferring party shall provide all documents evidencing the transfer. At any time, City may, in its sole discretion, revoke its prior approval of a subcontractor and direct Contractor to replace such subcontractor or perform the services that were being performed by such Contractor itself if the City finds in its reasonable judgment that (i) such subcontractor's performance is materially deficient or otherwise unacceptable to City; (ii) good faith doubts exist concerning the subcontractor's ability to render future performance because of changes in the subcontractor's ownership, management, financial condition, or otherwise; or (iii) there have been one (1) or more material misrepresentations by or concerning the subcontractor. The City reserves the right to terminate the Agreement if Contractor, in whole or in part, is acquired by another entity during the term of this Agreement. In the event Contractor is allowed to sublet any part of the Agreement, Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractor and the subcontractor's employees, as Contractor is responsible for the acts and omissions of Contractor's own employees.

**ASSIGNS.** See **SUCCESSORS.**

**AUDITS.** See **RECORDS.**

**CITY FACILITIES.** Except to the extent otherwise approved by the City in its sole discretion, Contractor shall use any and all items provided by the City for the sole and exclusive purpose of providing the services or for delivery of goods described in this Agreement. Use of City facilities by Contractor does not constitute a leasehold interest in favor of Contractor or Contractor's customers.

Contractor shall use any and all items provided by the City in an efficient manner. To the extent that Contractor utilizes such items provided by the City in any manner that unnecessarily increases facility costs or other costs incurred by the City, City reserves the right to set-off the excess costs of such practices. Contractor shall be responsible for any damage to any and all item(s) provided by the City resulting from the abuse, misuse, or neglect of Contractor, its employees and subcontractors or other failure to comply with its obligations respecting such items provided by the City.

Contractor, its employees and agents shall keep any and all items provided by the City in good order, not commit or permit waste or damage to such items, and not use such items for any unlawful purpose. Contractor shall act and comply with City's standard policies and procedures as made available to Contractor regarding access to and use of such City-provided items, including procedures for the physical security of the City facilities.

Contractor shall permit City and its agents and representatives to enter into those portions of the City facilities occupied by Contractor staff at any time to perform facilities-related services.

Contractor shall not make any improvements or changes involving structural, mechanical or electrical alterations to the City facilities without the City's prior written approval. Any improvements to the City facilities will become the property of the City.

When the City facilities are no longer required for performance of the services described in Exhibit “[@EXHIBIT IDENTIFICATION@]”, Contractor shall return such facilities to the City in substantially the same condition as when Contractor began use of such facilities, subject to reasonable wear and tear.

**CITY LIABILITY.** The City shall have no liability except as specifically provided in this Agreement. The City, by execution of this Agreement, assumes no liability for damages caused to persons or property by reason of Contractor providing goods or services herein or for injury to any employee, agent or subcontractor of the Contractor performing under this Agreement.

**CITY'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF.** If evidence is produced before the final settlement of all or any balances that Contractor has failed to pay subcontractors, laborers employed on its work, or failed to pay for materials used therein, or if the City has reason to suspect the same, the City may withhold such balances and upon evidence satisfactory to the City as to the amount due for such goods,

labor, and materials, the City, acting as the agent of Contractor, may settle and pay for the same and charge the amounts to Contractor and deduct the same from the said balance or balances.

**COMPANY'S/CONTRACTOR'S PERSONNEL.** (This paragraph/section is applicable only to purchase of services contracts). Contractor certifies that it presently has adequate qualified personnel to perform all services required under this Agreement and that all services performed under this Agreement shall be supervised by Contractor. Contractor will make its personnel aware of and cause them to comply with the City's policies that have been made known to Contractor while performing pursuant to this Agreement. Contractor further certifies that all of its employees assigned to perform any services hereunder shall have such knowledge and experience as required to perform the duties assigned to them. Any employee of Contractor who, in the opinion of the City, is incompetent, whose conduct becomes detrimental to the services, or whom the City deems to be unsatisfactory for any reason, shall immediately be removed from association with the services hereunder per the City's request. Upon such request, Contractor shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training. Contractor is responsible for the acts or omissions of its personnel under or relating to this Agreement.

Contractor shall be solely liable and responsible for providing all employee compensation and benefits to, or on behalf of, all persons performing services pursuant to this Agreement. The City shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, health, welfare and disability benefits, federal and local taxes, or other compensation, benefits or taxes for any personnel provided on behalf of Contractor. In addition, Contractor shall be solely liable and responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any services performed by or on behalf of Contractor pursuant to this Agreement.

**CONFIDENTIALITY.** Subject to the open records laws of the State of Tennessee, while performing under this Agreement, the parties may gain access to proprietary and/or confidential information that, if disclosed to third parties, may be damaging to each other. The parties agree not to disclose such information to third parties and shall take all reasonable steps to prevent unauthorized access to any of each other's confidential and proprietary information. Such information shall include, but shall not be limited to, materials considered to be confidential information as a matter of law (*e.g.*, personnel records), and shall also include (i) all materials in any form developed or created by each party related to funding and financial and business information; (ii) all information owned, possessed or used by a party, which is communicated to, learned, developed or otherwise acquired by that party in the performance of this Agreement; (iii) the terms, conditions and pricing contained herein; and (iv) any other information that has been advised by a party is confidential, privileged or proprietary. Confidential information, as used in this Agreement, shall not include (i) information in a party's possession prior to disclosure; (ii) information generally available to the public or that becomes available to the public through a source other than a party under this agreement, or (iii) information that was rightfully obtained by a party from a third party who is under no obligation of confidentiality to either party to this Agreement with respect to such information. Each party agrees that it will accept and hold confidential information obtained from each other in confidence at all times during and after termination of this Agreement. A party shall neither use nor disclose such information, except as provided in this Agreement or as required by law, without the prior written permission of affected party.

Subject to the open record laws of the State of Tennessee, each party acknowledges and agrees that a breach of this section may cause the affected party irreparable injury and damage; therefore, each party expressly agrees that the affected party shall be entitled to seek injunctive or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement. Each party agrees that it will disclose confidential information only to those employees who have a right and need to know, and shall require its employees, agents, and subcontractors to comply with the requirements of this provision and the requirements of the provisions herein titled "Public Statements" and "Rights in Data."

**CONFLICT OF INTEREST.** Neither party shall engage in any conduct or activity in the performance of this Agreement that constitutes a conflict of interest under applicable federal, state or local laws, rules and regulations. Contractor covenants that it has no public or private interest, and shall not acquire any interest, directly or indirectly, which would conflict in any manner with the performance required under this Agreement, and Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Contractor or any agent or representative of Contractor, to any officer, official, agent or employee of the City, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement. Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to Contractor in connection with anything contemplated or performed relative to this Agreement. For breach or violation of this provision, the City shall have the right to recover or withhold the full amount of such gratuities.

**COUNTERPARTS.** This Agreement may be signed in multiple counterparts and/or counterpart signature pages, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument.

**COVENANT AGAINST CONTINGENT FEES.** Contractor warrants that it has not employed or retained any company or person other than a *bona fide* employee working solely for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a *bona fide* employee working solely for Contractor any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision/warranty, the City shall have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

**DEBARRED OR SUSPENDED ENTITIES.** By signing this Agreement, Contractor certifies that it is not presently listed by any federal agency as debarred, suspended, or proposed for debarment from any federal contract activity. If during the term of this Agreement this information changes, Contractor shall notify City without delay. Such notice shall contain all relevant particulars of any debarment, suspension, or proposed debarment.

**DESCRIPTION OF GOODS / SCOPE OF SERVICES.** See **SCOPE OF SERVICES.**

**DISPUTE RESOLUTION.** In the event of any dispute, controversy, or claim arising out of or relating to this Agreement or the breach thereof, the parties agree that they shall first use their best efforts in an attempt to settle the dispute through negotiations involving themselves or their representatives as they each deem appropriate. Any dispute concerning a question of fact in connection with this Agreement between Contractor and the City shall be referred in successive order for resolution, first to the City's Chief Procurement Officer/Purchasing Agent, second to the City's Chief Legal Officer/City Attorney, and thirdly to the Mayor of the City of Memphis, whose decision regarding the City's position as to the same shall be final.

**DRAFTER.** This Agreement is the result of arm's-length negotiations between the parties and shall be construed to have been drafted by all parties such that any ambiguities in this Agreement shall not be construed against either party.

**DUE DILIGENCE AND NON-RELIANCE.** Contractor represents, warrants and covenants that it has had opportunity to conduct, and has conducted, due diligence with respect to this Agreement, and all other items and



conditions it deems necessary to conclude this Agreement, and Contractor represents, warrants and covenants that it has not relied upon any written or oral statement of City or its employees, directors, officers, consultants, attorneys or any elected or appointed officials in executing this Agreement.

**EMPLOYMENT OF CITY WORKERS.** Contractor shall not engage, on a full-time, part-time or any other basis during the term of this Agreement, any professional or technical personnel who are or have been at any time during the term of this Agreement in the employment of the City.

**EMPLOYMENT OF ILLEGAL IMMIGRANTS.** Contractor hereby certifies to comply with all applicable federal and state laws prohibiting the employment of individuals not legally authorized to work in the United States. Contractor shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. In the event Contractor fails to comply with any and all local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States, this Agreement may be canceled, terminated or suspended in whole or in part by the City, and Contractor may be prohibited from contracting to supply goods and/or services to the City for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract with the City.

**ENTIRE AGREEMENT.** This Agreement, together with all exhibits, attachments, and addendums hereto (if applicable), constitutes the full and final understanding of the parties with respect to the subject matter hereof and supersedes and replaces any and all prior or contemporaneous agreements or understandings, whether written or oral, express or implied, between the parties with respect to the subject matter of the Agreement.

**FORCE MAJEURE.** Neither the City nor Contractor shall be deemed in default hereunder, nor shall either be responsible for any delay, interruption, or cessation in the performance of its obligations under this Agreement where such failure of performance is the result of any *force majeure* event, including, but not limited to, acts of God, riots, wars, strikes, epidemics, acts, governmental authorities or acts of nature or other similar cause beyond its control. Both shall put forward its best efforts to mitigate any delay, interruption, or cessation in the performance of its obligations under this Agreement related to said *force majeure* event.

**GENERAL COMPLIANCE WITH LAWS.** If required, Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and shall obtain, at its own expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. Such permits and licenses will be made available to City upon request.

Contractor is assumed to be familiar with and agrees that at all times it will observe and comply with all applicable federal, state, and local laws, ordinances, and regulations in any manner affecting this Agreement. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA). Contractor shall promptly notify City of any conflict discovered between the Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict.

**GOVERNING LAW.** The terms and conditions of this Agreement shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the

validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, without regard to conflicts of laws principles. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

**HEADINGS.** Titles, articles, and/or section headings to the provisions herein are for reference purposes only and will be disregarded completely in the interpretation and validity of this Agreement or any of its terms.

**HOLD HARMLESS.** See **INDEMNIFICATION**.

**INCORPORATION OF “WHEREAS” CLAUSES.** The foregoing “WHEREAS” clauses are hereby incorporated into this Agreement and made a part hereof.

**INDEMNIFICATION.** Contractor shall indemnify, defend, save and hold harmless the City and its officers, agents and employees from and against any and all claims, losses, demands, suits, actions, penalties, damages (consequential or otherwise), settlements, costs, expenses, or other liabilities of any kind and character, including without limitation attorney fees and litigation expenses, arising out of or in connection with the performance of this Agreement by Contractor, its employees, subcontractors, or agents or the breach of this Agreement by Contractor, its employees, subcontractors or agents. This obligation shall survive the expiration or termination of this Agreement. Neither Contractor nor any employees of Contractor shall be liable under this section for damages arising out of injury or damage to persons or property directly caused by the negligence of the City or any of its officers, agents, or employees.

Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor shall in no way limit Contractor's responsibility to indemnify, defend, save and hold harmless the City or its elected or appointed officials, officers, employees, agents, assigns, and instrumentalities as herein required.

The City reserves the right to appoint its own counsel regarding any matter defended hereunder. Contractor acknowledges that the City has no obligation to provide legal counsel or defense to Contractor, its employees or subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this Agreement against Contractor as a result of or relating to obligations under this Agreement. The City shall have no obligation for the payment of any judgments, or the settlement of any claims asserted against Contractor or its subcontractors or employees as a result of or relating to Contractor's obligations hereunder.

Contractor shall immediately notify the City c/o Chief Legal Officer/City Attorney; 125 North Main Street, Room 336; Memphis, TN 38103, of any claim or suit made or filed against Contractor or its subcontractors regarding any matter resulting from or relating to Contractor's obligations under this Agreement and agrees to cooperate, assist and consult with the City in the defense or investigation thereof.

**INDEPENDENT CONTRACTORS.** Nothing in this Agreement shall be deemed or construed to represent that Contractor, or any of Contractor's employees or agents, are the agents, representatives, or employees of the City. Contractor acknowledges that it is an independent contractor over the details and means for performing this Agreement. Anything in this Agreement which may appear to give the City the right to direct Contractor as to the

details of the performance of its obligations hereunder or to exercise a measure of control over Contractor is solely for purposes of compliance with local, state and federal regulations and means Contractor will follow the desires of the City only as to the intended results of the scope of this Agreement.

It is further expressly agreed and understood by Contractor that neither it nor its employees or agents shall hold themselves out contrary to the terms of this paragraph, and the City shall not be liable for any representation, act or omission of Contractor contrary to the provisions hereof.

**INSURANCE.** See insurance requirements as included in RFP #52515. and incorporated herein as if stated verbatim within the Agreement.

**Performance Bond** – Shall be required by the contractor and shall cover the term of the contract. Bond shall be issued in an amount equal to fifty percent (50%) of the estimated payments for the first term (year) of the Contract. The bond amount shall be adjusted annually throughout the life of the Contract to an amount equal to fifty percent (50%) of the actual payments for the preceding 12-month period.

In addition, **Performance Bonds** must be furnished by the contractor as provided in the Solid Waste Contract. The Bidder shall submit a Consent of Surety evidencing its ability to furnish the Performance Bond. All bonds must be submitted on the forms provided herein and shall be accompanied by a certificate of the surety company certifying that the agent who executed the bond was authorized to bind the surety company as of the date of the bond. All bonds provided to the City shall be issued by a surety company licensed to do business in the State of Tennessee.

**JURISDICTION AND VENUE.** See **GOVERNING LAW.**

**MINORITY, WOMEN, AND/OR SMALL BUSINESS ENTERPRISE(S) CONTRACTING.** Contractor shall take affirmative action to ensure that small, minority-owned and women-owned businesses which have been certified by the City are utilized when possible as sources of supplies, equipment, construction and services.

**MODIFICATION.** See **AMENDMENT.**

**MONITORING RIGHTS.** See **RECORDS.**

**NONDISCRIMINATION.** Contractor hereby agrees to abide by, to take affirmative action to ensure that, and to comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination, which provide in whole or in part, that no person shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in Contractor's employment practices on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, state or statutory law. Contractor shall, upon request, show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination. In the event Contractor fails to comply with the City's nondiscrimination policy and any and all other laws prohibiting discrimination, this Agreement may be canceled, terminated or suspended in whole or in part by the City.

The City reserves the right to investigate any claims of illegal discrimination by Contractor and in the event a finding of discrimination is made and upon written notification thereof, Contractor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the City. Contractor's failure or refusal to do so shall be cause for termination of this Agreement in accordance with the terms of this Agreement.

Any other agreement which relates to this Agreement to which Contractor is a party, including without limitation, Contractor's agreements with its subcontractors, shall specifically contain a provision to this effect.

**NOTICES.** All notices, approvals, and other communications required or permitted to be given hereunder shall be written and hand-delivered with signed receipt; delivered by facsimile; delivered by a nationally recognized overnight courier; or mailed *via* certified U.S. mail, postage prepaid and return receipt requested. All notices shall be deemed received and effectively given as follows: (i) if by hand-delivery, on the date of delivery; (ii) if by fax, on the date the fax transmission is received at the receiving location and receipt is telephonically confirmed by the sender; (iii) if by delivery *via* U.S. mail, on the date of receipt appearing on a return receipt card; or (iv) if by overnight courier, on the date receipt is confirmed by such courier service. All notices must be addressed to the respective party at the following addresses or to such other person or address as either party may designate in writing and deliver as provided herein:

To the CITY:

City of Memphis [ @DIVISION NAME@ ]

[ @ADDRESS - NOTICES@ ]

Memphis, TN [ @ZIP CODE - NOTICES@ ]

Attn: [ @CITY CONTACT/REPRESENTATIVE@ ]

Fax: [ @FAX NUMBER - CITY CONTACT/REPRESENTATIVE@ ]

With copy, if requested,

to:

Chief Legal Officer/City Attorney

125 N. Main Street, Room 336

Memphis, TN 38103

To CONTRACTOR:

[ @CONTRACTOR NAME@ ]

[ @CONTRACTOR ADDRESS@ ]

[ @CONTRACTOR CITY@ ], [ @CONTRACTOR STATE@ ] [ @CONTRACTOR ZIP CODE@ ]

Attn: [ @CONTRACTOR REPRESENTATIVE@ ]

Fax: [ @FAX NUMBER - CONTRACTOR REPRESENTATIVE@ ]

**NUMBER AND GENDER.** Unless the context requires otherwise, (i) use of a specific gender imports the other gender(s); and (ii) use of the singular imports the plural and *vice versa*.

**OBLIGATIONS EXTENDED BEYOND PERIOD OF PERFORMANCE.** See **SURVIVAL**.

**ORGANIZATION STATUS AND AUTHORITY.** Contractor represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the State of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

The execution, delivery and performance of this Agreement by Contractor has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of Contractor, any provision of any indenture, agreement or other instrument to which Contractor is a party, or by which Contractor's respective properties or assets are bound, in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

Each person executing this Agreement represents that he/she is lawfully authorized to sign the Agreement on behalf of the party he/she represents, and execution of the Agreement was duly and regularly authorized by the party's governing body.

**PARTIES IN INTEREST.** See **SUCCESSORS**.

**PATENT INDEMNIFICATION.** Contractor warrants that any goods/services furnished hereunder do not infringe or violate any patent, trademark, copyright, trade secret, or any other proprietary right of any third party; that it shall defend all suits that may arise with respect thereto; and that it shall indemnify, defend, save and hold harmless the City, its officials, employees, agents, successors and assigns, from and against all liabilities, suits, claims, damages, costs or expenses, including without limitation attorney and expert witness fees, for or by reason of any actual or alleged claim the goods/services purchased by City hereunder infringe any patent, copyright, or are a violation of trade secret disclosure laws, whether by reason of Contractor's purchase or otherwise. This indemnification obligation shall survive the expiration or termination of this Agreement.

**PENALTIES AND LIQUIDATED DAMAGES.** Contractor recognizes that various losses, penalties (including service level penalties), and/or liquidated damages may be assessed against City for certain failures to perform. In any such case where City's failure to perform is due to some negligent act, omission, or failure to perform on Contractor's part, Contractor agrees to pay or reimburse City for such assessments and City may deduct same from any Contractor's invoices as applicable. In any such case where Contractor is assessed penalties, such penalties will not exceed the corresponding amount for which the City is penalized due to Contractor's negligent act, omission, or failure to perform.

**PRECEDENCE.** In the event of any inconsistency between the terms or provisions expressed in this Agreement, and any term or provision in any of the other contract documents, the order of precedence shall be as follows: (1) this Agreement, including all Exhibits, except that all general terms and conditions contained in the main body of this Agreement shall control over any conflicting general terms and conditions contained in any Exhibit hereto; (2) Contractor's response, if applicable; (3) City's solicitation, if applicable.

**PUBLIC RECORDS.** Notwithstanding anything to the contrary contained herein or within any other document supplied to the City by Contractor, Contractor understands and acknowledges that the City is a governmental entity subject to the State of Tennessee Public Records Act, and any reports, data or other information supplied to the City regarding goods supplied or services performed hereunder may be subject to disclosure as a public record in accordance with the laws of the State of Tennessee.

**PUBLIC STATEMENTS.** Contractor shall not make any announcement, release any information, or authorize or participate in any interview concerning this Agreement and the goods and/or services required herein, without obtaining prior written consent from the City. Contractor shall require its employees, agents, and subcontractors to comply with the requirements of this provision. This provision shall survive the expiration or termination of this Agreement.

**RECORDS.** Contractor shall make and keep as the same legally enforceable, full and complete books, documents, accounting records and other evidence, that specifically relate to this Agreement, in accordance with generally accepted accounting principles. Contractor shall retain such records, and shall make same available to the City, upon reasonable request, during the term of this Agreement, and for a minimum period of seven (7) full years after completion of the contract obligations or from the date of final payment under this Agreement, whichever is later. In the event any litigation, claim or audit is instituted prior to the expiration of the required five-year retention period, such records shall be retained until such litigation, claim or audit finding has been resolved.

Contractor's activities conducted pursuant to this Agreement shall be subject to monitoring and evaluation by the City, the state, the federal government or their duly appointed agents or employees. Upon reasonable notice, Contractor shall permit the City, any other governmental entity, any agency participating in the funding of this Agreement, or any of their duly authorized representatives, to enter Contractor's offices, during regular business hours, to interview employees and to inspect and/or copy said records and books of accounts together with any and all documents pertaining hereto that may be kept, maintained or possessed by Contractor. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

**RELATIONSHIP OF PARTIES.** This Agreement does not and shall not be construed to create a partnership or joint venture between the parties hereto. Contractor is performing its obligations hereunder as an independent contractor and not as City's agent or employee. Contractor will not hold itself out contrary to the terms of this paragraph and City will not become liable for any representation, act, or omission of Contractor contrary to the provisions hereof.

**REMEDIES CUMULATIVE.** All remedies available to the City herein are cumulative and shall be in addition to all other rights and remedies provided by law. The termination, expiration, or suspension of this Agreement shall not limit the City from pursuing other remedies available at law or in equity.

**REPORTS.** Upon request, Contractor shall prepare and submit reports of its activities, funded under this Agreement, to the originating department of the City. The reports shall include an itemization of the use of the City's funds, inclusive of specific services delivered by Contractor. Any such reports provided to the City shall be prepared with the understanding that the City may make such reports available to the public.

In addition, Contractor shall submit and, as necessary, update subcontractor information (including but not limited to payments thereto), for **any and all subcontractors** used on City project(s) via the purchase of goods or services, in the City's compliance tracking software, B2GNow. The City shall have the right to withhold future disbursement of funds under this Agreement and any future agreements until the requirements of this provision have been met.

**RIGHTS IN DATA / SOFTWARE.** Contractor agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type relating to its activities under this Agreement, whether or not the same is accepted or rejected by City, shall remain the property of City and shall not be used or published by Contractor or any other party without the express prior consent of City. Software development, if any, specifically developed as part of this Agreement shall be the intellectual property of City. Contractor recognizes that said data including software development, if any, specifically developed as part of this Agreement shall be the intellectual property of City and is the exclusive property of the City and that the City reserves the right to use, market, license, or sell it to others.

Contractor shall obtain assurances similar to those contained in this subsection from persons, contractors and subcontractors retained by Contractor. Contractor acknowledges and agrees that a breach by Contractor of the provisions of this section will cause the City irreparable injury and damage. Contractor, therefore, expressly agrees that the City shall be entitled to injunctive or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

**SERVICE MARKS.** Contractor agrees that it shall not, without City's prior written consent, use the name, service mark or trademarks of the City.

**SEVERABILITY.** If any terms or provisions of this Agreement are held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid, or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added as a part of this Agreement, upon good-faith negotiation by the parties, a provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible, and still be legal, valid and enforceable. Parties acknowledge that some Agreement provisions may be inapplicable to the scope of work or goods that are germane to this Agreement. Parties waive no rights or remedies where the provisions are applicable.

**SHIPMENTS. (This paragraph/section is applicable only to purchase of goods contracts).** Substitutions will not be accepted, unless otherwise specified herein. Partial shipments may be allowed unless otherwise stated in writing by City, however, full shipment of all items ordered hereunder must be completed by the date specified in this Agreement or this Agreement will be subject to cancellation by the City. Contractor shall not ship excess quantities without the City's prior written approval.

**STANDARD OF PERFORMANCE.** All services by Contractor shall be performed in compliance with the specified requirements, in a manner satisfactory to the City, and in accordance with the generally accepted business practices and procedures of the City and pursuant to the governing rules, practices and regulations of the industry for the type

of work performed under this Agreement.

**SUBCONTRACTING.** See **ASSIGNMENT.**

**SUBJECT TO FUNDING.** This Agreement is subject to availability and annual appropriation of funds by the Memphis City Council. In the event sufficient funds for this Agreement are not available or appropriated by the Memphis City Council for any of its fiscal period during the term hereof, then the City shall immediately terminate this Agreement upon written notice to Contractor. In the event of such termination, Contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed up to the termination date. Such termination by the City shall not be deemed a breach of contract by the City, and Contractor shall have no right to any actual, general, specific, incidental, consequential, or any other damages whatsoever of any description or amount that have not been earned as of the date of termination.

**SUCCESSORS.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

**SURVIVAL.** The parties hereto acknowledge that provisions that require or contemplate performance or observance after expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and continue in full force and effect.

**TERMINATION:** Termination of this Agreement with or without cause.

- a. It shall be cause for the immediate termination of this Agreement if, after its execution, the City determines that either:
  - a. Contractor or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pleaded *nolo contendere*, or has pleaded or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, misappropriation of government funds, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
  - b. Contractor subcontracted, assigned, delegated, or transferred its rights, obligations or interests, voluntarily or involuntarily, under this Agreement without the City's consent or approval; or
  - c. Contractor has filed for bankruptcy, has been adjudicated bankrupt, become insolvent or made an assignment for the benefit of creditors, or a receiver or similar officer is appointed to take charge of all or part of Contractor's assets.
- b. The City may cancel/terminate this Agreement, in whole or in part, upon providing written notice to Contractor of the City's intention to terminate the Agreement as a result of Contractor's failure to provide the goods and/or services specified under this Agreement or in violation(s) of any of the terms herein, and Contractor has failed to cure such breach within ten (10) calendar days of such notice. The City may reject the goods and/or services and cancel this Agreement for any goods/services rendered or to be rendered hereunder. At its option, City may return the rejected portion of such goods to Contractor at its expense or hold the same for such disposal as Contractor shall indicate. In the event of any such rejection/termination, the City shall, at the City's option, have the right to obtain like goods and/or services elsewhere or to take over the work and prosecute the same to completion, both at Contractor's expense; and in such event, the City may take possession of and utilize in completing the work, such materials, appliances, etc. as may be on the site of the work and necessary therefore.



Contractor shall be liable to the City for any loss, damage, or additional cost incurred thereby, including but not limited to any difference between the cost for procuring such like services and the price specified herein, attorneys' fees and court costs.

- c. Notwithstanding the foregoing or any section herein to the contrary, Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by Contractor, and the City may withhold any payments to Contractor, for the purpose of setoff, until such time as the exact amount of damages due the City from Contractor is determined.
4. The City may, in its sole discretion, suspend and/or terminate this Agreement for convenience upon giving thirty (30) calendar days' prior written notice to Contractor. In the event a purported termination for cause by the City is in error, then such termination may, at the City's sole discretion, be deemed to be a termination for convenience under this section. In the event of such termination, Contractor shall be entitled to receive just and equitable compensation, as determined by the City, for any satisfactory authorized work performed in accordance with the Agreement up to the termination date; but in no event shall the City be liable to Contractor for expenses incurred after the termination date.
  5. Contractor shall deliver to the City all hard copy and electronic files maintained on behalf of the City within thirty (30) calendar days of termination of this Agreement. Upon reasonable request, the City reserves the right to obtain such information prior to the termination of this Agreement.
  6. All goods accepted by City or services completed by Contractor prior to the termination date shall be documented and all tangible work documents shall be transferred to the City prior to payment for services rendered and shall become the sole property of the City. Such termination by the City shall not be deemed a breach of contract by the City, and Contractor shall not be compensated for any anticipatory profits, or other damages of any description, which have not been earned as of the date of termination.

**TERMINATION OF PRIOR AGREEMENTS.** See **ENTIRE AGREEMENT**.

**THIRD PARTY BENEFICIARY:** This Agreement is entered into solely between, and may be enforced only by, City and Contractor. Unless otherwise specified herein, this Agreement shall not be deemed to create any rights in third parties, including suppliers or customers of either party.

**TITLE & RISK. (This paragraph/section is applicable only to purchase of goods contracts).** The title and risk of loss of any goods hereunder shall not pass to the City until the City actually receives and takes possession of the goods at the point or points of delivery. Contractor shall assume all liability and responsibility for delivery of such goods in good condition to the City.

**TRANSFER.** See **ASSIGNMENT**.

**TRANSPORTATION CHARGES/F.O.B. DELIVERY. (This paragraph/section is applicable only to purchase of goods contracts).** All pricing is F.O.B. destination, in which Contractor shall be responsible for freight, transportation costs, and all incidental charges, unless delivery terms are specified otherwise in the bid and agreed to by the City. In the event shipping other than F.O.B destination is allowed by the City, the City agrees to reimburse Contractor for transportation costs in the amount specified in Contractor's bid, or actual costs, whichever is lower, provided the City shall have the right to designate what method of transportation shall be used to ship the goods.

**WAIVER OF CONTRACTUAL RIGHT.** No term or provision of this Agreement, or of any document executed pursuant hereto, shall be held to be waived, modified or deleted unless in writing and executed by the parties hereto; provided that any such waiver shall not be identified as a waiver of any succeeding breach hereto or of any other provision herein contained. No delay or failure of either to enforce any right or provision of this Agreement or in any document executed pursuant hereto shall operate as a waiver, limitation, or relinquishment of that party(s) right to subsequently enforce and compel strict compliance with such provision and/or any other provision herein or in any document related hereto. Parties acknowledge that some Agreement provisions may be inapplicable to the scope of work or goods that are germane to this Agreement. Parties waive no rights or remedies where the provisions are applicable.

No consent or waiver, express or implied, by either party to or of any breach or default by the other in the performance of any of its obligations shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party.

The enforcement by any party of any right or remedy it may have under this Agreement or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

**WARRANTY.** Contractor warrants to the City that all goods/services shall be free from defects in design and faulty or improper materials and/or workmanship, shall be in strict compliance with the terms of this Agreement and shall be fit and sufficient for the purpose intended or shall have met the particular specification of the solicitation or the accepted Contractor response relating to this Agreement. This warranty shall be effective for a period of not less than one year from the date of acceptance by the City of such goods and/or services as satisfactorily complete, and shall be in addition to all other warranties, express, implied or statutory. The warranty shall survive the termination or expiration of this Agreement.

**END OF DOCUMENT - SIGNATURE PAGE NEXT**

**Remainder of Page Left Intentionally Blank**

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement.

**CITY OF MEMPHIS**

**[@CONTRACTOR NAME@]**

By: \_\_\_\_\_

Jim Strickland, Mayor

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_

Jennifer Sink, Chief Legal Officer/  
City Attorney

Attest:

By: \_\_\_\_\_

Comptroller

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **ADDENDUM**

**ADDENDUM.** The following Addendum to the Agreement is by and between the City and Contractor. If not otherwise defined herein, defined terms shall have the meaning as set forth in the Agreement, which is specifically referenced and incorporated herein. In the event of any discrepancy between other provisions of the Agreement and this Addendum, the terms of this Addendum shall govern.

**The parties agree that the following provisions shall be added to or amend the Agreement as follows:**

**(IF NO ADDENDUM THIS PAGE SHOULD BE DELETED/REMOVED)**

## EXHIBIT 9 - SERVICE AREA MAP

### 9.1 Service Area Map Link

<https://app.powerbigov.us/view?r=eyJrljoiZDY5NjM4MmMtNjdjZi00OTI5LWEyMmltNzEwODI0M2M5NmNiliwidCI6ljQxNjQ3NTYxLTY1MzctNDQyMy05NmE5LTg1OWU4OWY4OTE5ZiJ9>